

Amy Finley, 3/20/2014

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1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF OHIO
 3 WESTERN DIVISION
 4
 5 HEALTHY ADVICE :
 NETWORKS, LLC, :
 6 :
 Plaintiff, :
 7 :
 vs. : Case No. 1:12CV610
 8 :
 CONTEXTMEDIA, INC., :
 9 :
 Defendant. :

10 Videotaped deposition of AMY FINLEY, a
 11 witness herein, taken by the defendant as
 12 upon cross-examination, pursuant to the
 13 Federal Rules of Civil Procedure and pursuant
 14 to notice of counsel as to the time and place
 15 and stipulations hereinafter set forth, at
 16 the offices of Keating Muething & Klekamp,
 17 PLL, One East Fourth Street, Suite 1400,
 18 Cincinnati, Ohio 45202, at 9:30 a.m.,
 19 Thursday, March 20, 2014, before PAUL JAHN,
 20 Videographer and ANN M. BELMONT, RPR, a
 21 Registered Professional Reporter and Notary
 22 Public within and for the State of Ohio.

23 - - -
 24

LITIGATION SUPPORT SERVICES, INC.
 Cincinnati, Ohio (513-241-5605) / Dayton, Ohio (937-224-1990)

Amy Finley, 3/20/2014

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1 S T I P U L A T I O N S

2 It is stipulated by counsel for the
3 respective parties that the deposition of AMY
4 FINLEY, a witness herein, may be taken at
5 this time by the defendant as upon
6 cross-examination and pursuant to the Federal
7 Rules of Civil Procedure and notice to take
8 deposition, all other legal formalities being
9 waived by agreement; that the deposition may
10 be taken in stenotype by the Notary Public
11 Reporter and transcribed by her out of the
12 presence of the witness; that the transcribed
13 deposition was made available to the witness
14 for examination and signature and that
15 signature may be affixed outside the presence
16 of the Notary Public-Court Reporter.

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1 MR. JAHN: We are on the record.

2 Would the court reporter please swear in the
3 witness.

4 AMY FINLEY,

5 a witness herein, of lawful age, having
6 been first duly sworn as hereinafter
7 certified, was examined and testified as
8 follows:

9 MR. O'BRIEN: We're ready? Oh,

09:33 10 okay. Different videographers do things
11 differently.

12 CROSS-EXAMINATION

13 BY MR. O'BRIEN:

14 Q. Good morning, Ms. Finley, my
15 name is Dick O'Brien. We just met, I
16 represent ContextMedia in the lawsuit brought
17 against it by Healthy Advice Networks. As
18 you know, I'll be asking you a series of
19 questions today. If at any point in time you
09:34 20 don't understand one of my questions, just
21 let me know that, okay?

22 A. Okay.

23 Q. And I'll try to fix it.

24 Otherwise, if you do go ahead and answer my

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1 question, we are all going to leave here
2 today assuming that you understood the
3 question; is that fair?

4 A. Yes.

5 Q. What's your full name?

6 A. Amy Michelle Finley.

7 Q. Have you ever been deposed
8 before?

9 A. No.

09:34 10 Q. Let me -- I put before you
11 what's been previously marked as Defendant's
12 Deposition Exhibits 1, 2 and 3.

13 (Exhibit 1 identified.)

14 (Exhibit 2 identified.)

15 (Exhibit 3 identified.)

16 A. Okay.

17 Q. And you understand that you're
18 appearing here today to give testimony on
19 behalf of the company Healthy Advice
09:34 20 Networks, right?

21 A. Yes.

22 Q. And you understand you're here
23 to give testimony on behalf of HAN as to
24 certain particular topics, right?

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8

1 A. Yes.

2 Q. And if you look at Defendant's
3 Deposition Exhibit 1, I think the topics
4 begin on page 3.

5 A. Okay.

6 Q. And I take it you've seen this
7 list of topics before?

8 A. Yes.

09:35

9 Q. And is it your understanding
10 you're here to testify today on behalf of HAN
11 as to topic 2?

12 A. Yes.

13 Q. And also as to topic 7?

14 A. Yes.

15 Q. And also on behalf -- excuse me,
16 also as to topic 10A?

17 A. Yes.

18 Q. And 10B?

19 A. Yes.

09:35

20 Q. And 11?

21 A. Yes.

22 Q. And then you can put that one to
23 the side and pick up Defendant's Deposition
24 Exhibit 2, and there the topics also begin on

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9

1 page 3. And you've seen these topics before
2 as well, right?

3 A. On page 3?

4 Q. Yes, ma'am.

5 A. Yes.

6 Q. And you're here to testify on
7 behalf of HAN as to topics 15 and 16, right?

8 A. Yes. And what was the other
9 one? I'm sorry, 15 and?

09:36

10 Q. 16.

11 A. And 16, yes.

12 Q. Now, you can put that one to the
13 side and pick up Defendant's Exhibit 3. Once,
14 again, the topics begin on page 3.

15 A. Okay.

16 Q. And you've seen those topics
17 before today, right?

18 A. Yes.

09:36

19 Q. And you're here to testify on
20 behalf of HAN as to topic 18, right?

21 A. I believe so. I'm not really
22 sure on this one.

23 MR. BERNAY: Dick, just to note
24 for the record, we've designated both Amy and

Amy Finley, 3/20/2014

10

1 Linda Ruschau on 18.

2 MR. O'BRIEN: Okay.

3 MR. BERNAY: Linda in terms of
4 advertisers and Amy as -- so far as 18 calls
5 for information concerning practices.

6 MR. O'BRIEN: Gotcha. Well,
7 thanks for that clarification.

8 THE WITNESS: Yes, thank you.

09:37

9 Q. They gave you a lot of topics,
10 didn't they?

11 A. They gave me a lot of topics.

12 Q. Tell me what you did to prepare
13 yourself to be able to adequately testify on
14 behalf of HAN as to these topics.

15 A. Well, I met with Aaron and I
16 also spoke with Mike Collette, Laura Buettgen
17 and Kelly Schulkers in regards to some of
18 these different topics that I know I'm
19 supposed to represent on.

09:37

20 Q. And I didn't get all the names.
21 What were the two after Mike Collette?

22 A. Kelly Schulkers.

23 Q. Kelly Schulkers.

24 A. And Laura Buettgen.

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1 Q. Laura, what's her last name?

2 A. Buettgen, it's B-O-G-G-E-T --

3 actually, don't even quote me how to spell

4 the last name. It's in reference to one of

5 her e-mails, so.

6 Q. Okay. Anything else besides talk

7 to those three people and your counsel?

8 A. No, and our counsel.

9 Q. Did you review any

09:38 10 documentation?

11 A. No. Well, I saw this -- one of

12 these forms, I don't remember which one, you

13 actually gave me of the whole thing, if it

14 was one, two or three, they all kind of look

15 the same to me.

16 Q. They do look the same. So

17 you're referencing the Deposition Exhibits 1,

18 2 and 3 that have the topics you're here to

19 testify to?

09:38 20 A. Right.

21 Q. What's Mr. Colette's position in

22 the company?

23 A. He is no longer -- he was on the

24 board. He is no longer, actually, I guess an

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1 active employee of PatientPoint.

2 Q. I see.

3 A. He used to be the CEO.

4 Q. What's he doing now?

5 A. I'm not really sure actually.

6 Q. But you spoke to him recently?

7 A. I did, yes.

8 Q. Is it a telephone conversation
9 or meeting?

09:39

10 A. Yes.

11 Q. And how long did that call last?

12 A. Probably about ten minutes.

13 Q. And what was the reason you
14 reached out to Mr. Collette?

15 A. To get his information on what
16 the board's response was to attrition.

17 Q. What did he tell you?

09:39

18 A. And that they were basically
19 started from when we first sent our first
20 cease and desist, that the plan was to see if
21 ContextMedia would discontinue their actions,
22 and kind of weighed that out to see if they
23 would do that. Obviously, that did not
24 happen, which is when they decided to pursue

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13

1 legal action.

2 Q. I see. And he informed you that
3 what you just said in your answer was part of
4 a discussion at the board level?

5 A. Yes.

6 Q. And did he tell you when that
7 discussion occurred?

8 A. No.

09:40

9 Q. Did he tell you whether there
10 were any minutes to reflect that discussion?

11 A. No.

12 Q. Anything else that you discussed
13 with Mr. Collette?

14 A. No.

15 Q. Did you take any notes of your
16 conversation with him?

17 A. No, I did not.

18 Q. Are you a note taker by habit?

19 A. No, I'm not.

09:40

20 Q. What about Ms. Shulter, why did
21 you reach out to her?

22 A. Ms. Schulkers, we had changed in
23 our agreements, our enrollment agreements the
24 terms of our cancellation policy of

Amy Finley, 3/20/2014

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1 notification 30 days to 60 days. I was just
2 verifying with her when we actually made that
3 switch, that's.

4 Q. When did she tell you?

5 A. January of 2011.

6 Q. Anything else you discussed with
7 her?

8 A. No.

9 Q. So you switched from a 30-day
09:40 10 notice to a 60-day notice in January 2011?

11 A. Yes.

12 Q. Is it a 60-day notice now?

13 A. No, it actually went back to
14 30 days.

15 Q. And when did that happen?

16 A. And actually I don't know the
17 date on that one, but it was last year.

18 Q. 2013?

19 A. Yes.

09:41 20 Q. Why did you go back to 30?

21 A. Realized that 60 was probably
22 asking too much on the practice.

23 Q. Did you go to 60 in the first
24 place -- why did you go to 60 in the first

Amy Finley, 3/20/2014

15

1 place?

2 A. Because we actually -- we, on
3 our end, needed more, were wanting more time
4 to schedule technicians to be able to recruit
5 to replace that practice.

6 Q. Because you were seeing an
7 increase in switch outs?

8 A. At that time, actually, in
9 January, no. It was just we were wanting more
10 time, so.

09:41

11 Q. Did the desire of HAN to have
12 more time to try to save practices who had
13 told HAN they wanted to switch out factor
14 into the 60-day notice?

15 MR. BERNAY: Object to the form.
16 You can answer.

17 A. I'm sorry, I'm sorry, repeat.
18 Can you repeat the question?

19 Q. Sure, I can ask it again. Fair
20 enough. Did the desire on behalf of HAN to
21 have more time to try to convince a practice
22 to stay with it after a practice initially
23 said we'd like to switch, did that desire on
24 behalf of HAN factor into HAN deciding to go

09:41

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1 from 30 to 60 days?

2 A. I don't believe that the 60 day
3 was really more of a save tactic. It was
4 more of, like I said, just giving us time to
5 have more time to recruit another practice in
6 replace of that, and for our technicians to
7 be able to schedule more time for us to be
8 able to find a technician to remove the
9 equipment.

09:42 10 Q. Was having more time to try to
11 save a factor in going from 30 to 60 days?

12 A. I'm sure it would, yes.

13 Q. Anything else you discussed with
14 Ms. Shulter?

15 A. No.

16 Q. And I take it you took no notes
17 of that one?

18 A. Huh?

19 Q. You took no notes?

09:42 20 A. I just wrote down the date, it
21 was January of 2011.

22 Q. And I'm not going to attempt her
23 last name, Laura?

24 A. Laura Buettgen.

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17

1 Q. Why did you reach out to her?

2 A. Laura Buettgen I reached out to
3 because she had sent an e-mail that she had
4 recently cleaned out her inbox, and I was
5 verifying when she had did that and why she
6 did that, and that was my discussion. So,
7 basically, she cleaned out her inbox because
8 she's -- as she put it, a pack rat, and her
9 inbox was full, she needed some space, she
10 cleaned out her inbox. What I -- I don't
11 even know the timing after that, but shortly
12 after that was when she got notification that
13 we were actually going into a lawsuit and
14 that nobody was supposed to remove anything.
15 She did not feel like she really had
16 anything, but the one thing that she did
17 have, the e-mail that she did have she saved,
18 she actually did have and was able to produce
19 to me, but she was surprised that she had it
20 because she'd just recently cleaned her inbox
21 out prior to all that.

22 Q. Gotcha. Anything else you
23 discussed with her?

24 A. No.

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18

1 Q. And she -- this cleaning out of
2 her inbox, it occurred after the lawsuit was
3 filed but before she got the notice?

4 A. It was -- she said it was the
5 beginning of August. She doesn't know
6 exactly which day, she just remembers it was
7 the beginning of August.

8 Q. Whose decision was it for you to
9 reach out to Mr. Collette, was that yours?

09:44

10 A. It was my counsel's.

11 MR. BERNAY: I would caution you
12 not to divulge the contents of your
13 conversation with counsel.

14 THE WITNESS: Okay.

15 Q. Whose decision was it for you to
16 reach out to Ms. Shulter?

17 A. Myself.

18 Q. Yourself?

19 A. Because I wanted to verify the
20 date.

09:44

21 Q. How about Ms. Buettgen?

22 A. Same thing, myself, just so I
23 knew.

24 Q. What's your current position

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19

1 with the company?

2 A. I'm the VP of provider services.

3 Q. How long have you held that
4 position?

5 A. For the last, was it
6 four-and-a-half years, I guess.

7 Q. How long have you been with HAN?

8 A. It's going on nine years.

9 Q. And before your current

09:44 10 position, what position did you hold with
11 HAN?

12 A. Providers -- wait, actually, it
13 was the director of practice relations. And
14 then I was a senior manager of the field
15 sales support.

16 Q. Senior manager?

17 A. Field sales support.

18 Q. As VP, your current position,
19 what are your duties and responsibilities?

09:45 20 A. To oversee the relationship
21 management team and the installation team.

22 Q. And the relationship management
23 team is managing relationships with member
24 practices, right?

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20

1 A. Yes, correct.

2 Q. Who do you report to in your
3 current position?

4 A. Kimberly Theiss.

5 Q. And as director of practice
6 relations, what were your duties and
7 responsibilities, excuse me?

8 A. It was actually, at that time,
9 just managing the relationship management
10 team.

11 Q. The folks interacting with the
12 practices?

13 A. Correct.

14 Q. Not on the sales side, but on
15 the relationship managing side?

16 A. Correct.

17 Q. And who did you report to then?

18 A. Jill Brewer.

19 Q. And Ms. Brewer is no longer with
20 the company, right?

21 A. Correct.

22 Q. Do you know why she left?

23 A. It was, from my understanding, a
24 voluntary action when we were downsizing.

Amy Finley, 3/20/2014

21

1 Q. When did you downsize?

2 A. In 2012 I believe.

3 Q. And do you know what prompted
4 the company to downsize?

5 A. No.

6 Q. What did you do as senior
7 manager of field sales?

8 A. Oversee the installation team
9 that processed the paperwork for new
10 enrollments.

11 Q. So, again, you're working on the
12 side of the business that deals with
13 practices after they've been recruited?

14 A. Yes, right.

15 Q. Who did you report to in that
16 position?

17 A. Jill Brewer.

18 Q. Do you stay in touch with Ms.
19 Brewer?

20 A. Rarely, yes.

21 Q. Senior manager field sales, does
22 that mean you're not at the headquarters, but
23 you're out in the field in some sense, or
24 just a reference to the fact that you're

Amy Finley, 3/20/2014

22

1 managing things that are going on in the
2 field?

3 A. Correct. I'm managing the team
4 inside that handles the processing of the
5 paperwork and scheduling of installation.

6 Q. And where did you work before
7 HAN?

8 A. Well, Exam Room Network, which
9 was a subsidiary of HAN. It was a breakoff
10 company, actually, On Target Media.

11 Q. It broke off from Target Media
12 and became a part of HAN?

13 A. An independent company. Exam
14 Room Network was the name of the company.

15 Q. I see. What was the business of
16 Exam Room Network?

17 A. They were televisions in
18 physician office exam rooms.

19 Q. Is Exam Room Network part of HAN
20 now?

21 A. It was acquired by HAN nine
22 years ago, which is how I became --

23 Q. I see.

24 A. -- a member of it.

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23

1 Q. I get it now. So HAN acquired
2 Exam Room Network as part of its branching
3 out into providing services in the actual
4 exam rooms, right?

5 A. Yes.

6 Q. What did you do for Exam Room
7 Network?

8 A. I was their broadcast
9 specialist, helped put together the sequence
10 of when the advertising and the actual
11 segments would play, scheduling.

12 Q. So you worked on the content
13 side?

14 A. I didn't actually create the
15 content. It was more of the scheduling and
16 working with the company that broadcast the
17 content to make sure the ads were in the
18 place they were supposed to be, the content
19 was where it was supposed to be, coordinating
20 all of that.

21 Q. Who was the company that was
22 broadcasting the content?

23 A. You know what, I don't even
24 remember.

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24

1 Q. It was a third party?

2 A. Yes, it was a third party.

3 Q. How long were you with that
4 company?

5 A. I believe it was three years.

6 Q. What did you do before that?

7 A. Worked at On Target Media.

8 Q. Tell us what Target Media does.

9 A. On Target Media.

09:48 10 Q. On Target?

11 A. On Target Media was actually
12 PatientPoint, it has undergone a couple of
13 name changes over the years. So I started
14 with On Target Media, went with Exam Room
15 Network, and came back to Healthy Advice.

16 Q. Can't get away from them?

17 A. Can't get away from them.

18 Q. What did you do at On Target
19 Media?

09:49 20 A. I was then an administrative
21 assistant at that time.

22 Q. To who?

23 A. Multiple people within the
24 organization.

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25

1 Q. How long did you do that?

2 A. Probably two years, I think,
3 before I switched over to the Exam Room
4 Network.

5 Q. Before that you were in school?

6 A. Before that I was in school. I
7 work at Bethesda Tri Health, Bethesda concern
8 area.

9 Q. Do you have a college degree?

09:49

10 A. Yes.

11 Q. Where from?

12 A. Strayer University.

13 Q. I'm sorry?

14 A. Strayer University.

15 Q. In what field?

16 A. Marketing.

17 Q. Have you ever been involved in a
18 lawsuit like this before?

19 A. No.

09:49

20 Q. Do you believe it's important
21 for you to be truthful in your communications
22 within the company?

23 A. Yes.

24 Q. Do you think that's crucial?

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26

1 A. Yes.

2 Q. And you believe is it crucial to
3 be accurate in your communications?

4 A. Yes.

5 Q. To not be misleading?

6 A. Yes.

7 Q. And do you do your utmost best
8 to be truthful?

9 A. Yes.

09:50 10 Q. And accurate?

11 A. Yes.

12 Q. And not misleading?

13 A. Yes.

14 Q. You would never communicate on a
15 matter of HAN's business in a way that you
16 did not believe to be truthful, right?

17 A. Correct.

18 Q. And if you found out that
19 someone working for you is not being
09:50 20 truthful, accurate, or was being misleading,
21 you would take action?

22 A. Correct.

23 Q. How many folks report to you
24 right now?

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1 A. Thirty.

2 Q. Wow!

3 A. Oh, well, directly, I'll say
4 four.

5 Q. Okay. Who are those four?

6 A. Heather McGauvran, Kelly
7 Schulkers, Dawn Haddison and Angel Culful.

8 Q. The others that report up
9 through them to you, are -- do they include
10 the folks that actually call practices when
11 HAN learns that they want to switch and try
12 to understand why the practice wants to
13 switch?

14 A. Yes.

15 Q. So Lori Smith, for example?

16 A. Yes.

17 Q. And Ms. Lawrence for example?

18 A. Yes.

19 Q. Ms. Lake?

20 A. Ms. Lake no longer works for the
21 company.

22 Q. Okay. How many folks are
23 currently involved in that kind of activity?

24 That is, when HAN learns that a practice

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1 wants to move away from HAN for whatever
2 reason, they then reach out and try to
3 understand why?

4 A. Twelve.

5 Q. And it's important to your
6 business to do the very best you can to try
7 to understand why a practice is leaving HAN,
8 right?

9 A. Yes.

09:51 10 Q. And tell me some of the reasons
11 why that's important knowledge for HAN to
12 have?

13 A. Well, it helps -- to understand
14 why they are leaving?

15 Q. Em-hm.

16 A. Why that's important?

17 Q. Em-hm.

18 A. Well, it helps us understand,
19 you know, more about our program and how we
09:51 20 can improve in our services or the
21 programming itself.

22 Q. And the company -- the
23 information that your team gathers, HAN then
24 uses that information to the best it can,

Amy Finley, 3/20/2014

29

1 right?

2 A. Yes.

3 Q. And for the reasons you just
4 said?

5 A. Correct.

6 Q. And churn is an important issue
7 in a business like HAN's, right?

8 A. Yes.

9 Q. Do you have a note -- does your
09:52 10 team have a notebook that assists that team
11 in how to debrief practices when they call
12 regarding churn?

13 A. No, I mean, a notebook. We have
14 probably a document that just -- actually,
15 I'm not even sure if we have a training
16 manual, I'm sorry. We have a training manual,
17 I don't -- there may be some scripts on
18 here's some things that you can say to
19 reiterate the value of the program.

09:52 20 Q. Em-hm.

21 A. I'm not sure if that's what
22 you're getting at, but, I mean, I don't think
23 we have one for, like, here's exactly what to
24 say if a certain company calls in or anything

Amy Finley, 3/20/2014

30

1 like that. It's here's what you say if they
2 are trying to say that they're moving or
3 something like that.

4 Q. And you call those scripts?

5 A. Yes.

6 Q. I said notebook. How do
7 those -- what do those scripts look like?

8 A. It's just a piece of paper.

9 Q. Okay. And that's been true as

09:52 10 long as you've been involved in this?

11 A. Yeah.

12 Q. And there's training around
13 this, too?

14 A. There's training on -- yes.

15 Q. Is there training that your team
16 undergoes to make them as effective as they
17 can in trying to elicit from practices who
18 told HAN they want to leave the reasons for
19 why they want to leave?

09:53 20 A. Right.

21 MR. BERNAY: Object to the form.
22 You can answer.

23 A. Yes.

24 Q. Who conducts that training

Amy Finley, 3/20/2014

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1 today, do you know?

2 A. Either myself or Heather
3 McGauvran.

4 Q. Who conducted it back in 2011?

5 A. That would be myself.

6 MR. JAHN: Pardon me, Counsel,
7 we're off the record.

8 (Break taken.)

9 MR. JAHN: We're on the record.

09:54 10 Q. Are there written materials that
11 assist in this training that we've been
12 talking about?

13 A. We have a manual that has how
14 to, really, to do different procedures and
15 processes. Like I said, as far as a training,
16 there really isn't. We have a script, we
17 have a paper with some script on some things
18 that they can help, talking points, really,
19 is what it is. And that's really all that
09:55 20 exists as far as that. Otherwise, it's more
21 verbal and just trying to role play with each
22 person practicing.

23 Q. Okay. Are these scripts generic
24 to any reason that HAN might have been given

Amy Finley, 3/20/2014

32

1 as to why a practice is leaving?

2 A. No -- I mean, okay. Can you
3 repeat the question? Sorry.

4 Q. Yeah. For example, do you have
5 one script when HAN has been told that the
6 practice is going to a competitor?

7 A. No.

8 Q. Another script when they say --

09:55

9 A. No, that's not broken out like
10 that. It's more talking points.

11 Q. Okay. Did there ever come a time
12 when there was a special script for practices
13 that contacted HAN indicating they wanted to
14 switch to ContextMedia?

15 A. No.

09:56

16 Q. Was there a time when this team
17 was ever instructed that, if they received
18 notice that a practice wanted to switch to
19 ContextMedia, they should be sure to ask
20 particular things?

21 A. Yes.

22 Q. And how did that manifest
23 itself? I mean, was that an e-mail
24 instruction, was it another script?

Amy Finley, 3/20/2014

33

1 A. I don't recall if it was e-mail
2 or if it was verbal, but it was one or the
3 other.

4 Q. And who gave those instructions?

5 A. Myself.

6 Q. What were those instructions?

7 A. If they were leaving to go to
8 ContextMedia, we were -- I instructed them to
9 find out if they were told or were offered
09:56 10 any incentive for switching, was also asking
11 them to find out if they -- you know, if they
12 were told they could remove the equipment on
13 their own, or any -- and just -- get any
14 other information as to why they're truly
15 switching it, to the best of your ability.

16 Q. So they were instructed to
17 really try to drill down and find out why the
18 practice was leaving?

19 A. To the best they could without
09:57 20 actually making them, you know, interrogating
21 the practice, basically.

22 Q. They weren't going to, like,
23 shine bright lights on them?

24 A. No. Put a camera on them, no.

Amy Finley, 3/20/2014

34

1 Q. No waterboarding?

2 A. No.

3 Q. And, again, you gave those
4 instructions because it was important to your
5 business to know as best you can the reason a
6 practice is leaving?

7 A. Correct.

8 Q. And it's the practice at HAN for
9 this team to then, once they've discerned the
09:57 10 reasons a practice is leaving, to put that
11 information in a database maintained in CMS,
12 right?

13 A. Correct, that is the database.

14 Q. That's been true as long as
15 you've been with the company?

16 A. Correct.

17 Q. That database is the best source
18 the company has for why a practice has
19 decided to leave, right?

09:58 20 A. Correct.

21 (Exhibit 27 identified.)

22 Q. Have you seen Exhibit 27 before,
23 Ms. Finley?

24 A. Yes, I have.

Amy Finley, 3/20/2014

35

1 Q. What's your understanding of
2 what this is?

3 A. This is our churn report.

4 Q. And how is this used in the
5 business?

6 A. It is used to make the executive
7 members in the business aware of our reasons
8 for churn.

09:59

9 Q. Is this a way to sort of, at a
10 high-level summary fashion, inform the
11 executive members of the reasons for churn
12 rather than having them go to the CMS
13 database and wade through that?

14 A. Correct.

15 Q. You're making it easier for the
16 senior folks?

17 A. Yes.

09:59

18 Q. And when you say the executive
19 team, who does that -- who did that include
20 in 2011?

21 A. Oh, my goodness, I couldn't
22 repeat everybody at that time.

23 Q. Who does it include now?

24 A. The executive team members now,

Amy Finley, 3/20/2014

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1 just off the top of my head, would be
2 Kimberly Theiss, who I report to, Greg
3 Robinson, Chris Martini, Tom McGinness, Raj
4 Toleti, Kathy Gould, Scott Nesbit. I'm sure
5 I'm forgetting others. We have quite a large
6 executive team.

7 Q. It sounds like that. I didn't
8 appreciate it was that large.

9 A. Em-hm.

10:00 10 Q. Was it similarly that size in
11 2011-2012?

12 A. I don't believe so.

13 Q. Who do you recall being on the
14 team in 2011-2012?

15 A. Jill Brewer, Mike Collette, Mike
16 McAllister, Kathy Gould, Scott Nesbit.

17 Q. What is Kathy Gould's position
18 with the company?

19 A. She is over our IT department.

10:00 20 Q. And your boss, what's her
21 position?

22 A. She is over field operations.

23 Q. And Mr. Martini, what's his
24 position?

Amy Finley, 3/20/2014

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1 A. He is our president of the
2 organization.

3 Q. And he reports up to McGinness?

4 A. Correct.

5 Q. Now, is your team trained on how
6 to input information into whatever it is that
7 produces Exhibit 27?

8 A. Yes.

10:00 9 Q. And are they trained to do the
10 best they can to input what they believe to
11 be the main reason a practice switched?

12 A. Correct.

13 Q. So a practice may have given
14 multiple reasons, but they're trained to use
15 their judgment to determine the main reason?

16 A. Correct.

17 Q. And that training involves --
18 that training involves written materials as
19 well, right?

10:01 20 A. It's really more verbal. I mean,
21 we have what each one of these reason codes
22 means. Which, for the most part, are pretty
23 obvious. And it's just that you pick one.
24 If -- depending upon if they are moving, say,

Amy Finley, 3/20/2014

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1 for instance, and there is a -- they are
2 moving and they decided to go with a
3 competitor when they move, then competitor to
4 be selected because that's the main reason
5 why they are switching, not necessarily
6 because they're moving.

7 Q. Is competition the main reason
8 for churn?

9 A. It appears that way.

10:01 10 Q. Is that your understanding based
11 on all the years you've worked for the
12 company?

13 A. I would say it's usually high,
14 yes.

15 Q. And does competition with
16 respect to Exhibit 27 include cable
17 television?

18 A. Correct.

19 Q. Is your CMS database also --
10:02 20 strike that.

21 Do your team members also, in
22 some fashion, input into the database when a
23 practice who's switching indicates, for
24 example, they wanted more sound?

Amy Finley, 3/20/2014

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1 A. Em-hm, yes.

2 Q. That's sort of a separate
3 exercise, putting that in the database?

4 A. There is an order that they will
5 place if there's a sound inquiry order.

6 Q. What does that mean, sound
7 inquiry?

8 A. It means the practice is
9 interested in sound.

10:02 10 Q. Then there's a particular place
11 you put that in the database?

12 A. It's an order that we put
13 underneath that location. We place a lot of
14 information -- or we use orders a lot in our
15 database to kind of use it to track and be
16 able to run reports.

17 Q. I don't think I'm familiar with
18 the use of the word order in that context, so
19 why don't you unpack that for me a little bit
10:03 20 .

21 A. Okay. It's almost like a task,
22 I guess, that would be placed. We have, I
23 guess, within our database, there's a section
24 for orders. We place an order for new

Amy Finley, 3/20/2014

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1 brochures, say, for instance, there's an
2 order for sound inquiry, because we could
3 actually then run a report on those orders to
4 see how many locations requested sound.

5 Q. Is there an order spot for
6 longer loop?

7 A. No.

8 Q. What are the other order
9 designations, if you will?

10:03 10 A. We have lots of orders. As far
11 as inquiries, I would say sound was one. Did
12 we have another inquiry? I'm sure there are
13 other ones, but we -- like I said, we have
14 lots of orders.

15 Q. Is there one for video?

16 A. There was one for video, yes.

17 Q. Is there one for less ad
18 content?

19 A. No.

10:04 20 Q. Was there one with respect to a
21 practice's desire to have more control over
22 the content?

23 A. I don't believe so.

24 Q. If you were to leave here at the

Amy Finley, 3/20/2014

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1 end of the day and try to figure out exactly
2 what all these order designations were, what
3 would you do?

4 A. I would have to go back into --
5 look into the database to pull up all the
6 orders that are available.

7 Q. You could put those on a screen
8 in front of you?

10:04

9 A. I don't know if they would all
10 fit on a screen. As I said, there are a lot
11 of orders.

12 Q. But you scroll down on the
13 screen?

14 A. Because everything we do is
15 based on orders, yes.

16 Q. When you say everything you do
17 is based on orders, what do you mean?

10:05

18 A. When we schedule a technician,
19 when we order brochures, when we are tasked
20 to call a practice, when it's time to service
21 the practice, I mean, just things like that.

22 Q. All of those sound like action
23 items of some sort?

24 A. Basically, yes.

Amy Finley, 3/20/2014

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1 Q. But if a practice has told you
2 it's leaving, it's going away, one of the
3 reasons was they wanted more sound, why would
4 someone put in sound inquiry as an order?

5 A. We're trying to gauge how many
6 people would actually -- really wanted sound
7 in their program.

8 Q. And that you can obviously use
9 in managing your business?

10:05 10 A. Correct.

11 Q. Thinking about how you might
12 change your content and things like that?

13 A. Correct.

14 Q. Are there other order entries
15 that you can think of other than sound and
16 video that are put in there when a practice
17 is leaving to help you sort of make business
18 decisions down the road, other than an action
19 item, if you will?

10:06 20 A. Oh, from an order standpoint?

21 Q. Yes.

22 A. No.

23 Q. So, if you wanted to, you could
24 go into the database and print a report for

Amy Finley, 3/20/2014

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1 every practice that left HAN for ContextMedia
2 that told HAN that one of the reasons it did
3 so was it wanted more sound?

4 A. Not necessarily. I don't believe
5 that everybody put that order in when they
6 were doing that. A lot of times we use that
7 order for existing customers. That wasn't
8 necessarily used for cancelled locations.

10:06

9 Q. But it would certainly capture
10 some of those?

11 A. Yes. I mean, they were --
12 obviously, they were able to do that and some
13 of them chose to, which was fine.

14 Q. So the only reason it wouldn't
15 capture all of them is someone didn't do what
16 they were told?

10:07

17 A. Well, we didn't really make
18 putting a sound inquiry when they cancelled a
19 priority. It was more if a current customer
20 had mentioned they wanted sound.

21 Q. I see. I'm going to show you
22 some other documents.

23 A. Okay.

24 MR. O'BRIEN: Did they give you

Amy Finley, 3/20/2014

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1 the stickers? The ones that were premarked?
2 They didn't give them to you? Well, you have
3 some stickers, right?

4 MR. JAHN: We're off the record.

5 (Break taken.)

6 MR. JAHN: We're on the record.

7 Q. I have handed to you, Ms.

8 Finley, what was previously marked in another
9 deposition as Defendant's Exhibit No. 19.

10:11 10 With this document, as with all of them, take
11 whatever time you want to look at it before
12 you answer any of my questions. When you are
13 ready to answer my question, the first one I
14 have for you, have you ever seen this before?

15 (Exhibit 19 identified.)

16 A. Yes.

17 Q. Okay. Did you see this recently?

18 A. Yes.

19 Q. And you saw this in preparation
10:11 20 for your deposition?

21 A. Yes.

22 Q. What I'm going to ask you about
23 is the e-mail from Ms. Brewer, it appears in
24 the first page, dated October 14, 2011. And

Amy Finley, 3/20/2014

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1 the e-mail chain has to do -- the subject of
2 the e-mail chain is practices switching from
3 HAN to ContextMedia, right?

4 A. Right.

5 Q. And Ms. Brewer was your boss at
6 the time, right?

7 A. Correct.

8 Q. And her e-mail is going to Tom
9 Campbell, what was his position at the time?

10:12 10 A. Tom Campbell was -- I don't know
11 his official title, but he was on the
12 executive team.

13 Q. Was Ms. Shattles on the
14 executive team?

15 A. Yes.

16 Q. And Mr. McAllister?

17 A. Yes.

18 Q. And Ms. Gould?

19 A. Yes.

10:12 20 Q. And Ms. Phillips?

21 A. No, she reported to Tom
22 Campbell.

23 Q. How about Ms. Theiss?

24 A. Kimberly Theiss, she reported to

Amy Finley, 3/20/2014

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1 Jill Brewer.

2 Q. And Ms. Brewer writes that, in
3 the second paragraph, "With that said, they
4 are clearly --" they being ContextMedia,
5 right?

6 A. Right.

7 Q. "Clearly capitalizing on our
8 practice's service concerns, specifically our
9 connectivity issues. Almost all of the
10:12 10 offices they've been able to convert have a
11 record of one or more service issues. This
12 is classic. You wait until your competitor
13 trips you up when you step in." Did I read
14 that correctly?

15 A. That's the way that it reads,
16 yes.

17 Q. Was HAN experiencing
18 connectivity service issues at this time
19 frame?

10:13 20 A. No, not that I was aware of.

21 Q. Do you think Ms. Brewer was
22 being truthful when she wrote that statement?

23 A. I don't know what Ms. Brewer
24 was -- her intention was with that actually.

Amy Finley, 3/20/2014

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1 Q. Did you -- how long did you
2 report to her?

3 A. Probably seven-and-a-half years.

4 Q. Did you, based upon that
5 seven-and-a-half years of experience, believe
6 that she was truthful?

7 A. Yes.

8 Q. And that when she wrote e-mails
9 to the executive team, she would do the best
10 that she could to be truthful?

11 A. I believe so, yes.

12 Q. Do you know what she's referring
13 to when she says connectivity issues?

14 A. I do know what connectivity
15 issues is. I know that that means that the
16 practice was not connecting to our home
17 office. We were -- to my knowledge, we were
18 not having a severe issue with connectivity
19 issues. Nor do I believe that the locations
20 that were leaving for ContextMedia all were
21 due to service.

22 Q. So you wouldn't agree with her
23 statement, is what you're saying?

24 A. Correct.

Amy Finley, 3/20/2014

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1 Q. Were some of the practices that
2 were leaving to Context leaving due to
3 service issues?

4 A. There were a few.

5 Q. Did you ever try to quantify
6 those?

7 A. No, I did not.

8 Q. If you wanted to quantify it,
9 the best you could do would be go into the
10 CMS database and see what was reported there,
11 right?

12 A. Correct.

13 (Exhibit 22 identified.)

14 Q. I'll hand you 22.

15 MR. BERNAY: I might have this
16 one. Save you have a little -- yeah, I've
17 got it, Dick.

18 Q. Thanks. I've now handed you, Ms.
19 Finley, what was previously marked as
20 Defendant's Deposition Exhibit 22, this is an
21 e-mail from Lori Smith to you and Heather
22 McGauvran, right?

23 A. Yes.

24 Q. Is this an e-mail you saw

Amy Finley, 3/20/2014

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1 recently as part of your preparation?

2 A. Yes.

3 Q. This e-mail repeats an entry
4 from the CMS database regarding why this
5 practice switched, right?

6 A. Em-hm.

7 Q. You have to answer yes.

8 A. Yes, I'm sorry.

9 Q. That's all right. It's more for

10:15 10 her benefit. And do you recall this practice
11 switching and the circumstances around it?

12 A. No, I do not.

13 Q. Do you recall practices who told
14 HAN when they were switching to ContextMedia
15 that they wanted to know if HAN could provide
16 more sound?

17 A. If they wanted to know if we
18 could provide more sound?

19 Q. Right.

10:16 20 A. I believe we've had practices
21 ask us that, yes.

22 Q. Were there instances where you
23 told the practice, at this point in time, you
24 can't give them more sound?

Amy Finley, 3/20/2014

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1 A. That would be correct.

2 Q. And did practices switch to
3 ContextMedia on occasion because HAN didn't
4 have the ability at that point in time to
5 deliver more sound?

6 A. From the information that was
7 provided to us, there were some that said
8 that, yes.

9 Q. Do you have any reason to
10:16 10 believe that the practice was not being
11 truthful with HAN when it said that?

12 A. I don't feel that -- I guess,
13 basically, with some of the practices, I do
14 think that they would just give us a reason.
15 We didn't push very hard either to really
16 drill down to find, because we didn't, again,
17 want to interrogate them, but we were trying
18 to get the best reason that we could.

19 Sometimes they would say that -- they would
10:17 20 put the information off to, you know, it was
21 somebody else in the office that made the
22 decision. You know, this is what they said,
23 not really wanting to say. So do I think
24 that they probably always give us the real

Amy Finley, 3/20/2014

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1 reason or was that the main reason? I don't
2 believe so, but, again, we only can go by
3 what they told us.

4 Q. Right. Can you think of a
5 practice where you later learned had not been
6 truthful with you about the reason for
7 switching?

8 A. I can't think of one off the top
9 of my head, no.

10:17 10 Q. Can you think of a practice that
11 gave you a reason for switching and you later
12 learned that it wasn't the main reason?

13 A. Yes -- oh, can I think of an
14 actual practice?

15 Q. Right.

16 A. I do recall that happening, but
17 I can't recall which practice.

18 Q. If you left here today and
19 wanted to identify such a practice, what
10:18 20 would you do?

21 A. I would have to do a lot of
22 digging. Probably a lot of comment reading
23 to figure that out.

24 Q. You think there are comments in

Amy Finley, 3/20/2014

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1 there that say that the practice told us the
2 reason was X and we later determined the real
3 reason was Y?

4 A. Yes. It could be that it was --
5 they told us at first it was because they
6 wanted to switch for the content, and then
7 the next we found out that they were provided
8 an incentive, for instance.

9 Q. You later learned that the
10 incentive was the sole reason they switched?

11 A. Yes.

12 Q. And that would be reflected in
13 the database?

14 A. I don't know if it would be
15 reflected in the database. It should be,
16 yes.

17 Q. It should be because the
18 database is supposed to capture everything
19 that is important?

20 A. Right, everything. Correct.

21 Q. You did, in fact, learn that
22 some practices -- strike that.

23 HAN did, in fact, learn that
24 some practices told HAN that the sole reason

Amy Finley, 3/20/2014

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1 they switched was because of incentive,
2 right?

3 MR. BERNAY: Object to the form
4 of the question. You can answer.

5 A. I believe we had cases like
6 that, yes.

7 Q. We may even see one in here that
8 said the sole reason was the incentive?

9 A. It may, yes.

10:19 10 Q. If that happened, it would be
11 duly noted in the database?

12 A. It should be, yes.

13 Q. Is there anything wrong, in your
14 view, with ContextMedia offering a practice
15 an incentive?

16 A. My belief, yes.

17 Q. Why do you say that?

18 A. I feel like they're buying the
19 practice.

10:19 20 Q. Does HAN ever give a practice
21 incentives?

22 A. For -- no.

23 Q. HAN never sends flowers?

24 A. To current customers, not to try

Amy Finley, 3/20/2014

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1 to recruit them.

2 Q. Sends flowers to current
3 customers trying to save them?

4 A. We may, or to -- we would send
5 flowers if there was a service issue, that,
6 basically, we were apologizing for the
7 inconvenience to their office.

8 Q. Sends practices cookies?

10:20

9 A. For the same reason, sorry to
10 inconvenience your office.

11 Q. Any other things of value that
12 HAN sends to practices?

13 A. Those would be the only two that
14 I'm aware of.

15 Q. I'm not going to ask you to get
16 inside somebody's head, but --

17 A. Thank you.

10:20

18 Q. -- on Exhibit 22, do you have
19 any idea what Ms. Smith is referring to when
20 she says "on a roll"?

21 A. No.

22 (Exhibit 23 identified.)

23 Q. 23 is another e-mail concerning
24 a practice that was telling HAN that it was

Amy Finley, 3/20/2014

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1 leaving HAN to go to ContextMedia, right?

2 A. It appears, yes.

3 Q. Is this a document you saw very
4 recently in connection with your preparation
5 as well?

6 A. No.

7 Q. It doesn't look like you are on
8 this. Have you ever seen this before?

9 A. I'm trying to recall. I feel
10 like I may have seen this comment before. I
11 don't know if I've seen it in this context of
12 the e-mail.

13 Q. Do you believe you may have seen
14 the comment before because it would have
15 stuck in your mind if a practice said that a
16 tech had to come out seven times in six
17 months?

18 A. Yes.

19 Q. This, based upon the comment
20 here, is a practice that is very frustrated
21 with connectivity issues, right?

22 A. It appears, yes.

23 Q. HAN ultimately decided that it
24 was in its best business interest to switch

Amy Finley, 3/20/2014

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1 from fax-based service to Internet-based
2 service, right?

3 A. Yes.

4 Q. And it's in the process of doing
5 that, right?

6 A. Have been, yes.

7 Q. When did that process start, do
8 you know?

9 A. I believe in 2012.

10:22 10 Q. And any idea when it's going to
11 be completed?

12 A. No.

13 Q. That's not under your
14 responsibilities?

15 A. My team contributes to,
16 obviously, doing that switch over, but it's
17 not a goal that I have on my goal sheet, I
18 guess you could say.

19 Q. Do you have a set of goals?

10:22 20 A. It's not on my targets, I guess.

21 Q. What are your targets?

22 A. Oh, well, just trying to retain
23 practices.

24 Q. Right. Is that -- that's really

Amy Finley, 3/20/2014

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1 the principal responsibility of your team,
2 right, to do whatever it can to keep the
3 business?

4 A. And to keep them engaged in the
5 products and to keep reiterating the value of
6 the programs.

7 Q. And as to that piece, to keep
8 them engaged, do you make it your business to
9 periodically reach out to practices and see
10 how they're doing, that kind of thing?

11 A. Correct.

12 Q. Is there a time table for that?
13 Once a month, every two weeks?

14 A. With the amount of practices
15 that we have, no. There was really no time
16 table. It's, you know, basically when we
17 have a time that there's not many tasks to
18 follow up on, we will proactively reach out
19 to certain practices.

20 Q. So if you had to assign the main
21 objectives of your team, it's try to save
22 practices who's told them they want to leave,
23 and before that happens, trying to make sure
24 they're happy and pleased with the service?

Amy Finley, 3/20/2014

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1 A. Trying to engage them in the
2 programs. All of our programs.

3 MR. JAHN: Pardon me, Counsel,
4 we're off the record.

5 (Break taken.)

6 MR. JAHN: We're on the record.

7 Q. Okay. We're done with that one.

8 Let me find 24. I've now placed before you
9 what was previously marked, Ms. Finley, as

10:24

10 Deposition Exhibit 24. This is an e-mail
11 chain between you and Lori Smith, and Heather
12 McGauvran's involved at one point. Is this a
13 document you saw recently as part of your
14 preparation?

15 (Exhibit 24 identified.)

16 A. No.

17 Q. This comment in the database
18 indicates the practice switched because the
19 new program is more engaging, offering sound
20 and a news ticker.

10:25

21 A. Em-hm.

22 Q. The practice felt the new
23 program provides more for the patient to look
24 at, do you see that?

Amy Finley, 3/20/2014

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1 A. Yes, I see that.

2 Q. And the practice that -- excuse
3 me. In this instance, the practice was
4 switching to ContextMedia, right?

5 A. Correct.

6 Q. And HAN was also informed that
7 the practice characterized the HAN product as
8 the same slides over and over again. Do you
9 see that?

10:25 10 A. Yes, same slides over and over,
11 yes.

12 Q. And these are each things that
13 HAN had learned from practices from time to
14 time, right?

15 A. These are things that were
16 stated, yes.

17 Q. And HAN was told these things by
18 the practices when it was telling HAN that it
19 was switching to ContextMedia, right?

10:26 20 A. Right.

21 Q. And have you ever seen the
22 ContextMedia loop?

23 A. Not the entire loop. I've seen
24 pieces of it from the website.

Amy Finley, 3/20/2014

60

1 Q. And you understand that it has
2 always offered sound, right?

3 A. Correct.

4 Q. And it has always been longer
5 than HAN's product, right?

6 A. I believe so, yes.

7 Q. And it's always had a news
8 ticker, right?

9 A. Yes.

10:26 10 Q. Now, this e-mail ends, at least
11 the middle one there -- or the comments,
12 excuse me, is placing sound inquiry. That's
13 what we just talked about, right?

14 A. Right.

15 Q. And in the last e-mail from Ms.
16 Smith to you says, "The spreadsheet is
17 updated with the exception of cancel reasons
18 from two locations." The spreadsheet she's
19 referring to, do you think that's the
10:26 20 database or something else?

21 A. That is the spreadsheet.

22 Q. That's something other than the
23 database?

24 A. The database, correct.

Amy Finley, 3/20/2014

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1 Q. What spreadsheet is she talking
2 about?

3 A. It was a spreadsheet that we had
4 kept of the locations that ContextMedia had
5 removed our equipment.

6 Q. I see. And when did you start
7 maintaining that spreadsheet?

8 A. I believe right away when we
9 had -- after our first experience of
10 equipment being removed from an office.

11 Q. Late 2010?

12 A. No, it would be in 2011.

13 Q. And whose decision was it to
14 create that spreadsheet?

15 A. I was told to create that
16 spreadsheet by Jill Brewer.

17 Q. And you did what Ms. Brewer told
18 you to, right?

19 A. Correct.

20 Q. And then you instructed your
21 team to help you keep this spreadsheet
22 current, right?

23 A. Correct. I pinpointed Lori to
24 be the person to keep the spreadsheet up to

Amy Finley, 3/20/2014

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1 date.

2 Q. I see. So how would she get
3 information from the other members of the
4 team that would keep the spreadsheet up to
5 date?

6 A. They would send her an e-mail or
7 let her know that this location.

8 Q. So was there an e-mail that went
9 out from you to your team indicating Lori's
10 going to be in charge of this activity and be
11 sure to give her any information you put in
12 the database about a switch to ContextMedia
13 to her as well so she can put it in the
14 spreadsheet?

15 A. I instructed them to notify her.
16 I -- quite honestly, what we did was really,
17 if we heard of anything like this happening
18 or that there was a switch or the equipment
19 just showed up on our door, Lori was the
20 point person to handle it. So really,
21 primarily, she was the one that took the
22 majority of the calls and took care of the
23 issues herself, just to have that one person
24 really handle the situation.

Amy Finley, 3/20/2014

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1 Q. I see.

2 A. Not to say there wasn't other
3 times where other people would, but if they
4 did, they would have to inform Lori so she
5 could be aware.

6 Q. So Lori was the point person if
7 you guys got wind of the fact that a practice
8 was switching to ContextMedia, she had the
9 role of making that call and finding out why?

10:29

10 A. Right.

11 Q. So is it fair to say that Lori
12 Smith, perhaps, better than anyone else at
13 HAN knows why practices switched from HAN to
14 ContextMedia?

15 A. I don't know if it would be to
16 say, but she got a lot of information, yes.

17 Q. She was on a lot more of those
18 calls than you?

19 A. Correct.

10:29

20 Q. Or anybody else in the team?

21 A. Yes.

22 Q. Maybe more than all the rest of
23 the team members combined?

24 A. Maybe, yes.

Amy Finley, 3/20/2014

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1 Q. How did the other team
2 members -- well, how did Lori know she was
3 supposed to do this?

4 A. That she was supposed to be the
5 point person?

6 Q. And create the spreadsheet.

7 A. I told her to.

8 Q. And was that in a communication
9 like we're having now or was it an e-mail or
10 both?

11 A. I don't recall if it was one or
12 the other.

13 Q. If it was an e-mail, you would
14 still have it, right?

15 A. I would think so.

16 Q. And then how did the other team
17 members know they were supposed to funnel
18 this to Lori?

19 A. That would have been
20 communicated either in a meeting or in an
21 e-mail.

22 Q. And if it was e-mail, it would
23 still exist, right?

24 A. Right.

Amy Finley, 3/20/2014

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1 Q. I mean, isn't that something you
2 would likely put in an e-mail to make it
3 clear rather than rely --

4 A. I would think so, yeah.

5 Q. That would be your practice,
6 right?

7 A. That would be make sense, yes.

10:30

8 Q. Whether it was an e-mail or in a
9 meeting, can you provide a little more detail
10 for me as to the nature of the communication,
11 any more information around it, why you were
12 doing it, how it was to be done, what
13 information was to be collected, anything
14 like that?

15 MR. BERNAY: Object to the form
16 of the question. You can answer.

10:30

17 A. The communication would be that,
18 you know, we had experienced locations where
19 the equipment was removed without our
20 authorization and we are trying to track
21 that, and so any -- any notice that you get,
22 anything that makes you aware of that, then
23 you need to make sure that Lori is aware of
24 that information so she can put it on the

Amy Finley, 3/20/2014

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1 spreadsheet.

2 Q. Okay.

3 A. I mean, it was really, it was
4 nothing, it was basic.

5 Q. Okay. When's the last time you
6 looked at this spreadsheet?

7 A. Oh, God, I don't know. It's
8 been a while.

9 Q. Who's the -- what's the format
10 of it? Does it just exist electronically, or
11 is there hard copies you've seen?

12 MR. BERNAY: I'm just going to
13 note for the record that we have claimed
14 privilege to the spreadsheet. And I would
15 advise you not divulge the content of the
16 spreadsheets. And we've been over this
17 before, Dick, and we told you that you have
18 the information contained within the
19 spreadsheet in other forms. Again, I would
20 advise you not to divulge the contents of the
21 spreadsheet.

22 A. The information --

23 MR. O'BRIEN: Actually, I don't
24 think you asserted privilege, you asserted

Amy Finley, 3/20/2014

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1 work product.

2 MR. BERNAY: Work product, sorry.

3 Thanks for correcting me.

4 A. The information in the
5 spreadsheet is also in the database. It's
6 just a format.

7 Q. So if the same information is in
8 the database, I guess the spreadsheet was
9 just created, and the information was put
10 there so you'd have a ready -- one source for
11 all this stuff regarding ContextMedia, right?

12 A. Right.

13 MR. BERNAY: Objection. You can
14 answer.

15 A. Correct.

16 Q. Rather than having to hunt and
17 peck through the database?

18 A. Yes.

19 Q. If you wanted to look at sort of
20 the landscape of reasons why practices
21 switched from HAN to ContextMedia, the most
22 user friendly way to do that is the
23 spreadsheet, right?

24 A. I don't -- no, I would think you

Amy Finley, 3/20/2014

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1 would still need to go through comments in
2 the database.

3 Q. Because the spreadsheet didn't
4 capture everything?

5 A. Correct.

6 Q. I see. Were there things in the
7 spreadsheet that weren't in the database?

8 MR. BERNAY: Again, I would
9 advise you not to divulge the contents.

10:33 10 THE WITNESS: Okay.

11 MR. BERNAY: Of the spreadsheet.

12 A. Right. I don't believe so.

13 Q. Okay. You'd have to look at it
14 to confirm?

15 A. I would -- yes, and I have not
16 looked at it in a while.

17 (Exhibit 25 identified.)

18 Q. Let's find Exhibit 25. I've
19 handed -- let's wait for counsel. I've handed
10:33 20 to you, Ms. Finley, what was previously
21 marked as Defendant's Deposition Exhibit 25.
22 This is another e-mail exchange -- excuse me,
23 regarding the Context switch out to
24 ContextMedia, right?

Amy Finley, 3/20/2014

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1 A. Yes.

2 Q. Is this something you looked at
3 recently?

4 A. Yes.

5 Q. In a meeting with your lawyer?

6 A. Yes.

7 Q. Let's go to the first e-mail in
8 this chain, which is on page 4 of the

9 document. And that's an e-mail from Lori

10:34 10 Smith, dated February 15, 2013, to you, Ms.
11 Schulkers, Ms. Grippo, Jennifer Hartfiel and
12 Allison Griffin, right?

13 A. Em-hm.

14 Q. And it concerns a practice
15 that's referred to as Lakeside, right?

16 A. Yes.

17 Q. This was a practice that was
18 very important to HAN because they had quite
19 a few locations, right?

10:34 20 A. Yes.

21 Q. What was the position of Ms.
22 Hartfiel at the time?

23 A. Jennifer Hartfiel?

24 Q. Yes.

Amy Finley, 3/20/2014

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1 A. Jennifer Hartfiel is one of the
2 installation coordinators processing new
3 enrollments.

4 Q. She reports to you, right?

5 A. She reports directly to Kelly
6 Schulkers.

7 Q. What was Ms. Griffin's position
8 at the time?

9 A. Allison Griffin is a sales rep.

10:35 10 Q. And this is a lengthy e-mail,
11 but I'd like to direct your attention to the
12 second paragraph that begins, "Pam was
13 remorseful."

14 A. On the second page?

15 Q. It's page numbered 4 at the
16 bottom.

17 A. Okay.

18 Q. Do you have it?

19 A. Em-hm.

10:35 20 Q. Second paragraph, about, I don't
21 know, three, four, sentences in, there's a
22 sentence that reads as follows, "Pam said
23 that the decision has already been made and
24 contracts were signed."

Amy Finley, 3/20/2014

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1 MR. BERNAY: Are you there?

2 A. Three or four sentences in?

3 MR. BERNAY: Start there.

4 A. Okay, yeah. I see it now.

5 Q. Then it goes on to say, "I
6 explained that often in our business the
7 contracts are not always binding. I just
8 want to make sure the decision makers know
9 about our suite of products before we begin
10 removing monitors," do you see that?

11 A. Em-hm.

12 Q. You didn't disapprove of Ms.
13 Smith telling the practice that, often in our
14 business the contracts are not always
15 binding, did you?

16 MR. BERNAY: Object to the form.
17 You can answer.

18 A. No, I don't believe so.

19 Q. And, in fact, you write, do you
20 not, at the top?

21 A. Oh, yes, good job.

22 Q. "Great job, Lori!"

23 A. Em-hm.

24 Q. "Thank you for contacting her,"

Amy Finley, 3/20/2014

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1 right?

2 A. Yes.

3 Q. And you wrote great job, Lori,
4 because you read this e-mail, which, as I
5 said, was long?

6 A. Em-hm.

7 Q. And you felt that Ms. Smith was
8 doing her level best to save a practice,
9 right?

10:37 10 A. Yes.

11 MR. BERNAY: Object to the form.
12 You can answer.

13 A. Yes.

14 Q. And to save it from going to
15 ContextMedia, right?

16 A. Yes.

17 Q. And you read her e-mail before
18 you said that, right? Obviously?

19 A. Yes.

10:37 20 Q. And, ultimately, her efforts
21 paid off, didn't they?

22 A. Yes.

23 Q. Are they still with you?

24 A. Yes.

Amy Finley, 3/20/2014

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1 Q. In your experience, as part of
2 HAN's effort to save a practice, has HAN ever
3 delayed scheduling the removal of the
4 equipment to give it more time to do the best
5 it could to convince the practice of the
6 merits of HAN's product?

7 A. We would schedule it when our
8 technician's availability.

9 Q. But did you ever not schedule it
10:38 10 as soon as a technician was available to give
11 you time to work with the practice, because
12 you thought you might be able to reach a
13 decision --

14 A. If they felt that they could
15 have the opportunity to, to talk to them and
16 engage them in the program to save them, yes.

17 Q. And that's something the members
18 of your team knew to do, right?

19 A. Yes, if they were working the
10:38 20 location.

21 Q. How are members of your team
22 paid? Compensated?

23 A. They are paid salary.

24 Q. Straight salary?

Amy Finley, 3/20/2014

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1 A. Em-hm.

2 Q. Is there any financial benefit
3 to them if they save a practice?

4 A. No.

5 Q. Is there -- is it straight
6 salary and no bonus at any point in time of
7 the year?

8 A. No, they're on a straight
9 salary. If it's a bonus, it's a corporate
10:39 10 bonus, not for individual saves.

11 Q. Bonus turns on how well the
12 company did that year?

13 A. Correct.

14 (Exhibit 33 identified.)

15 Q. Let's mark this. I've handed
16 you what's been marked as Exhibit 32.

17 MR. BERNAY: No, it should be 33.

18 Q. 33, thanks. This is another
19 e-mail exchange concerning a practice wanting
10:40 20 to leave HAN for ContextMedia, right?

21 A. Em-hm, yes.

22 Q. And it starts with an e-mail to
23 you from Chris Martini, right?

24 A. Yes, it starts there.

Amy Finley, 3/20/2014

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1 Q. I just noticed, Mr. Martini's
2 title here is president hospital solutions
3 and enterprise sales strategy, do you see
4 that?

5 A. Yes.

6 Q. Does -- at this point, you're
7 PatientPoint; is that right?

8 A. Yes.

10:40

9 Q. And by the way, if I use
10 PatientPoint and I use HAN and I use Healthy
11 Advice today, you'll understand they are all
12 the same for purposes of this exercise?

13 A. Correct.

14 Q. Does PatientPoint have multiple
15 presidents or just one?

16 A. It does have multiple
17 presidents, yes. We have two currently.

18 Q. But for your business, the
19 president is Mr. Martini?

10:41

20 A. Correct.

21 Q. And then with an e-mail that
22 starts on the first page, dated February 20,
23 2013, at 7:52 a.m., you write to Mr. Martini,
24 and then actual content's on the next page.

Amy Finley, 3/20/2014

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1 And you write, "Yes, this happened when we
2 called. It shouldn't be a clause, this
3 program is in the exam room, not the waiting
4 room. Their agreement," and you're referring
5 to ContextMedia, right?

6 A. Em-hm.

7 Q. "Like ours, states that no one
8 else can be in the waiting room area," but,
9 again, these are not binding contracts,
10:41 10 right?

11 A. Yes.

12 Q. You're writing that after you've
13 worked at the company for eight years?

14 A. Yes.

15 Q. And you're writing that to the
16 president of the company?

17 A. Huh? Yes.

18 Q. Has, in your experience, HAN
19 ever sued a practice to attempt to enforce
10:42 20 its enrollment agreement?

21 A. No.

22 Q. Has it ever threatened to sue
23 one?

24 A. No.

Amy Finley, 3/20/2014

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1 Q. You look like I said something
2 dumb.

3 A. No, I just. Sorry.

4 Q. That's all right. You're
5 entitled to react, it's your deposition. Ever
6 send a demand letter to a practice saying
7 we're going to come after you for breaching
8 our agreement?

9 A. No.

10:42 10 (Exhibit 34 identified.)

11 Q. I need to get organized here.
12 This is an e-mail exchange involving you, Ms.
13 Grippo, Ms. Brewer and Amanda Devlin, at the
14 top, but beneath it is an e-mail from Mr.
15 Jordan Zmick at ContextMedia, do you see
16 that?

17 A. Yes.

18 Q. Is this an e-mail you saw
19 recently?

10:43 20 A. I haven't seen this particular
21 e-mail chain, no.

22 Q. Did you see an e-mail recently,
23 if not this chain, involving the issue of Ms.
24 Devlin falsely telling someone at

Amy Finley, 3/20/2014

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1 ContextMedia that she was a representative of
2 a practice interested in their service?

3 A. Yes, it was in the previous one
4 with Jill Brewer.

5 Q. Whose idea was it for Ms. Devlin
6 to do that?

7 A. I don't know.

8 Q. No idea?

9 A. I don't know if it was -- it was
10:44 10 obviously her idea. I did not tell her to do
11 that.

12 Q. Who did she report to at the
13 time?

14 A. Jill Brewer.

15 Q. You don't know if it was Jill
16 Brewer's idea?

17 A. No, I don't.

18 Q. Was Ms. Devlin ever reprimanded
19 for doing that?

10:44 20 A. I don't know.

21 Q. In fact, weren't her actions
22 applauded by the company?

23 A. I can't say by the company.

24 Q. Applauded by you?

Amy Finley, 3/20/2014

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1 A. I did say great job to her, not
2 necessarily condoning her -- how she got
3 information, but her -- the fact that she was
4 able to get some factual information.

5 Q. On how many occasions, to your
6 knowledge, has HAN done that, instructed an
7 employee to act as an imposter to obtain
8 information from a competitor?

9 MR. BERNAY: Object to the form.

10:44 10 You can answer.

11 A. I don't believe anybody has ever
12 been instructed.

13 Q. Do you disagree with me that she
14 did act as an imposter?

15 A. No, I don't disagree with you.

16 Q. Do you think that what Ms.
17 Devlin did was unethical?

18 A. Yes.

19 Q. Did you ever tell her that?

10:45 20 A. No.

21 Q. To your knowledge, did Ms.
22 Brewer ever tell her that?

23 A. Not to my knowledge.

24 Q. To your knowledge, did Mr.

Amy Finley, 3/20/2014

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1 Martini ever tell her that?

2 A. Not to my knowledge.

3 Q. Is she still with the company?

4 A. Yes.

5 Q. In what position? Is she still
6 part of your team?

7 A. No, she's not on my team.

8 Q. Was she part of your team then?

9 A. No.

10:45 10 Q. Whose team was she on then?

11 A. At this time, she was on Jill
12 Brewer's. She reported to Jill Brewer, the
13 sales team.

14 Q. You did too, right?

15 A. I did.

16 Q. But different?

17 A. Right. She's in the sales side.

18 I'm not in sales, she's in sales.

19 Q. I see. Sales to practices?

10:45 20 A. Yes.

21 Q. Not sales to advertisers?

22 A. Correct.

23 Q. So what was Ms. Brewer's

24 position at this time?

Amy Finley, 3/20/2014

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1 A. She was the EVP of -- I want to
2 say operation and sales, sales and
3 operations.

4 Q. So she was pretty senior?

5 A. Yes.

6 Q. Who did she report to at the
7 time, the president?

8 A. I believe Mike McAllister.

9 Q. The CEO?

10:46 10 A. The COO.

11 Q. Oh, okay. McAllister was the
12 COO, and Collette was the CEO?

13 A. Correct.

14 Q. Now, this e-mail includes Mr.
15 Zmick's information to Ms. Devlin, Mr. Zmick
16 being from ContextMedia?

17 A. Em-hm.

18 Q. Because he believes that she's a
19 representative of a practice he's trying to
10:46 20 sell her, right?

21 A. Em-hm.

22 Q. And he's touting what he
23 believes the merits of ContextMedia's
24 product, right?

Amy Finley, 3/20/2014

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1 A. Yes.

2 Q. And he sends some links to allow
3 her to view the portions of the content,
4 right?

5 A. Yes.

6 Q. For example, he gives her a link
7 as to some content where the ContextMedia
8 content gives a personal story example?

9 A. Em-hm.

10:47 10 Q. And then another link for a
11 recipe, right?

12 A. Em-hm, yes.

13 Q. Another one for physical
14 activity, right?

15 A. Yes.

16 Q. And these are things that, if
17 you didn't know before, you knew about them
18 then were included in ContextMedia content,
19 right?

10:47 20 A. Yes, but I knew before they had
21 these.

22 Q. And it was reported back to you
23 from time to time that one of the reasons
24 that a practice switched from HAN to

Amy Finley, 3/20/2014

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1 ContextMedia was that the practice liked the
2 recipes?

3 A. Yes.

4 Q. And another reason it was given
5 was they liked the video on exercises and
6 things like that?

7 A. It could be. I don't recall that
8 one.

9 Q. That one doesn't stand out for
10 you?

11 A. That does not stand out to me.

12 Q. And do you see anything in here
13 in Mr. Zmick's e-mail that you believe to
14 have been false or misleading?

15 A. In the e-mail to Ms. Devlin?

16 Q. Yes.

17 A. No.

18 Q. And as to equipment, he tells
19 her that -- because she said she was from
20 Accent Health, another competitor in the
21 market, right?

22 A. Em-hm, yes.

23 Q. She -- he tells her that, "We
24 will, upon your having Accent Health remove

Amy Finley, 3/20/2014

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1 the equipment, will coordinate installation
2 of ours," right?

3 A. That's what it says.

4 (Exhibit 35 identified.)

5 Q. Let's mark this as 35. This is
6 another exchange involving Ms. Devlin's
7 interactions with Jordan Zmick of
8 ContextMedia, right?

9 A. Yes.

10:49 10 Q. Is this one you saw recently?

11 A. No.

12 Q. She -- in addition to falsely
13 stating that she was from a practice, she
14 also gave a false name, right?

15 A. It's not her name, no.

16 Q. Berne is not her name?

17 A. No.

18 Q. And she is now trying to get
19 more information from him about content and
10:50 20 wanted to know if they have any silent
21 content, and he forwards some examples of
22 ContextMedia silent content, right?

23 MR. BERNAY: Object to the form
24 of the question. You can answer.

Amy Finley, 3/20/2014

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1 A. It appears after he
2 approached -- reapproached her to reengage
3 with her to try to see if she was still
4 interested, yes. She tells him that she was
5 going to silent, is what it says, and that he
6 says that they have a silent loop.

7 Q. And he says that it's longer and
8 much more thorough than the Healthy Advice
9 that you were interested in --

10:50 10 A. Assuming, yeah.

11 Q. And you know why he made that
12 assumption that it was Healthy Advice, right?

13 A. No.

14 Q. Well, wasn't Healthy Advice the
15 only competitor in the field, then, that was
16 offering only silent content?

17 A. Oh, yes, okay.

18 Q. So she said she wants -- she's
19 looking at someone else, a competitor who
10:51 20 provides silent, it stands to reason, if
21 you're in the business and in the know, that
22 it's your company, right?

23 A. Correct.

24 Q. Do you think it was -- he said

Amy Finley, 3/20/2014

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1 anything false and misleading in her -- in
2 his interaction with her once he thought she
3 was considering Healthy Advice?

4 A. No, not at this time.

5 Q. Does HAN, to your knowledge,
6 consider its content to be a trade secret?

7 A. Yes.

8 Q. If you consider your content to
9 be a trade secret, wouldn't it stand to
10:51 10 reason that ContextMedia would -- might
11 consider its content to be a trade secret?

12 A. I -- they purchase their
13 equipment -- their content, I know that, so
14 it's different than where our -- our content
15 is actually developed in-house through our
16 creative department, so.

17 Q. So you think that might be a
18 reason that HAN's content is a trade secret
19 but ContextMedia's isn't?

10:52 20 MR. BERNAY: Object to the form
21 of the question. You can answer.

22 A. It could be, but I've honestly
23 never thought about it.

24 Q. You didn't think about it when

Amy Finley, 3/20/2014

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1 Ms. Devlin was -- by falsely impersonating
2 herself causing ContextMedia to send HAN, a
3 competitor, example after example of its
4 content?

5 MR. BERNAY: Objection. You can
6 answer.

7 A. No, I did not. They were demos,
8 sales demos is the way I viewed them.

9 Q. Do patients in member practices
10 of HAN's have to sign nondisclosure
11 agreements before they can step into the
12 waiting room?

13 A. No.

14 (Exhibit 36 identified.)

15 Q. Let's mark this as 36.
16 Exhibit 36 starts with an the exchange
17 between Mr. Zmick and Ms. Devlin, and then
18 you forwarded it up to Mike Collette, and
19 then Mike Collette writes to Kathy Gould, and
20 I don't know if you were included there or
21 not, it doesn't -- I can't tell.

22 A. No.

23 Q. In any event, what you -- Mr.
24 Collette -- I just asked you this question,

Amy Finley, 3/20/2014

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1 now I forgot. COO or CEO?

2 A. Mike Collette is the CEO.

3 Q. Okay. Maybe I'll get it right
4 by the end of the day. So you're forwarding
5 this information where Ms. Devlin is acting
6 as an imposter for ContextMedia. You forward
7 that up to the president of the company,
8 right?

9 A. Yes.

10:54 10 Q. And you write, "Mike, this is
11 the information we received from RHN towards
12 the end of the year," right?

13 A. Yes.

14 Q. And so you're writing on
15 April 2012, you're sending him something that
16 you got back in October of 2011?

17 A. Em-hm.

18 Q. What provoked you to do that?
19 What inquiry or -- I'll stop, let me back up.
10:54 20 What provoked you to do that? And I'll stop
21 there.

22 A. I believe he asked me if I had
23 any information on RHN in there and their
24 program.

Amy Finley, 3/20/2014

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1 Q. Okay. And besides this, do you
2 recall whatever -- do you recall whether you
3 sent him anything else in response to his
4 inquiry?

5 A. I don't recall.

6 Q. You might have, you just can't
7 remember as you sit here two years later?

8 A. Exactly.

9 Q. And then he writes to Ms. Gould,
10:55 10 "Part of the frustration PRG," who is PRG?

11 A. The physician recruitment group,
12 the sales team.

13 Q. Reporting up to Ms. Brewer?

14 A. Yes.

15 Q. Is experience -- let me start
16 over. "Part of the frustration PRG is
17 experiencing is the competitors are already
18 offering more sophisticated custom message
19 options, RSS feeds, etc., so they can't
10:55 20 understand why we can't do the same. Note the
21 RSS feeds issue is obviously a different
22 story as it requires a broadband connection,"
23 do you see that?

24 A. Yes.

Amy Finley, 3/20/2014

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1 Q. And then he concludes, "By the
2 way, Berne is Amanda," and I'm told, but you
3 don't have to take my word for it, that the J
4 is a smiley face, that's the way it gets
5 reproduced, but. Do you know how Mr. Collette
6 knew that Berne was Amanda Devlin, because
7 you don't tell him that, at least not in this
8 e-mail.

9 A. No, I don't know how. I don't
10:56 10 know. I don't recall if I told him or if he
11 just made that assumption knowing that he
12 knew Ms. Devlin.

13 Q. Because that's the kind of thing
14 Ms. Devlin does all the time?

15 A. No, her last name is -- it says
16 Devlin, so that's the only reason. I don't
17 know.

18 Q. And Devlin, though, is a very
19 common name?

10:57 20 A. Huh?

21 Q. Devlin is a common name.

22 A. It is?

23 Q. Must not be Irish.

24 A. I only know one Devlin.

Amy Finley, 3/20/2014

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1 Q. Okay. So he either figured it
2 out all by himself or someone had to tell
3 him, right?

4 A. Right.

5 Q. Did you have any other action
6 with Mr. Collette with respect to the
7 activities of Amanda Devlin, aka, Berne
8 Devlin?

9 A. No, not that I recall.

10:57 10 Q. Yeah, I was going to say --

11 A. Yeah, I don't believe so.

12 Q. Okay. What is RSS?

13 A. The RSS feeds?

14 Q. Right.

15 A. That's where you get the weather
16 and the news ticker.

17 Q. Okay. I've never heard that.
18 Why is it called RSS, do you have any idea?

19 A. No, I don't.

10:57 20 Q. Do you agree with his statement
21 there that, "Part of the frustration PRG is
22 experiencing is the competitors are already
23 offering more sophisticated custom message
24 options, RSS feeds, etc."?

Amy Finley, 3/20/2014

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1 A. Yes, I do agree that they were
2 experiencing frustration.

3 Q. Because that's what your team
4 was learning, right?

5 A. This was the sales team that
6 we're trying to sell new programs, yes.

7 Q. Right. But on your side of the
8 business, when you're interacting with
9 practices who are telling you they're going
10 to switch to ContextMedia, they're telling
11 you things like they want more sophisticated
12 custom message options and they want RSS
13 feeds, right?

14 MR. BERNAY: Object to the form
15 of the question. You can answer.

16 A. What they would say, from my
17 side of the team, would say they wanted
18 video, they didn't use that terminology. Or
19 that they would like news or weather tickers.

20 Q. And that's the kind of
21 information your team would gather as part of
22 its objective to understand why practices
23 switched to share with the sales team, right?

24 A. Right. Or the sales team, also,

Amy Finley, 3/20/2014

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1 in turn would get that information while
2 being out in the field trying to, maybe, not
3 even if it was another company, but just what
4 some practices may tell them that they want.

5 Q. They'd confront the same issue?

6 A. Correct.

7 Q. And do you know if Mr. Collette
8 was correct when he said that RSS feeds
9 really can't be provided without a broadband
10 connection?

11 A. That is correct. You need a
12 broadband to be able to do that.

13 Q. And was it about this time that
14 HAN made it a business objective to improve
15 its product offering to offer things like RSS
16 feeds?

17 A. I -- we still don't offer RSS
18 feeds, we offer weather.

19 Q. I see.

20 A. It's not an RSS feed. That's all
21 I really.

22 Q. Did HAN ever make it a business
23 objective to offer more sophisticated custom
24 message options?

Amy Finley, 3/20/2014

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1 A. Yes.

2 Q. And are you doing that now?

3 A. Yes. I don't recall when that
4 started, though. If it was prior to this, it
5 was something I know we were in the works of
6 trying to create to offer more video.

7 Q. To your knowledge, did the
8 president of the company, Mr. Collette, ever,
9 in any way, shape or form, suggest that Ms.
10 Devlin be reprimanded for her conduct?

11 A. Not to my knowledge.

12 MR. BERNAY: Hey, Dick, it's
13 eleven o'clock, let's take a break.

14 MR. JAHN: We're off the record.

15 (Break taken.)

16 MR. JAHN: We're on the record.

17 (Exhibit 37 identified.)

18 Q. I've handed to you and your
19 counsel what's been marked as Defendant's
20 Deposition Exhibit 37. This is Ms. Buettgen
21 forwarding to you and some others a comment
22 that she's put in the CMS regarding the
23 practice switching to ContextMedia and then
24 some e-mail exchanges with you and Ms.

Amy Finley, 3/20/2014

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1 McGauvran?

2 A. McGauvran.

3 Q. McGauvran. Do you agree with
4 what I just said?

5 A. This is an e-mail exchange
6 between --

7 Q. Right.

8 A. Yes.

9 Q. The comment indicates that, "The
11:09 10 practice called to see if someone was going
11 to come pick up the equipment, could they buy
12 out the equipment." Did, on occasion, HAN
13 sell its equipment to practices?

14 A. No.

15 Q. And Ms. Buettgen told him,
16 "There's no need to get our equipment back.
17 The site cancelled to go with RHN," you know
18 RHN is ContextMedia, right?

19 A. Yes.

11:09 20 Q. She goes on to write, "It looks
21 like we had a date set and had to cancel
22 because we didn't have a tech in the area,"
23 do you see that?

24 A. Yes.

Amy Finley, 3/20/2014

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1 Q. First, are you aware of
2 instances where the practice contacted HAN to
3 arrange for the return of HAN's equipment and
4 HAN said, no need to do that, you can just
5 keep it?

6 MR. BERNAY: Object to the form
7 of the question. You can answer.

8 A. Obviously, I was aware.

9 Q. Right.

11:10 10 A. I don't really recall this that
11 much. The equipment being left with the
12 practice was a rare instance. And typically
13 would happen, if it was, either due to
14 somebody not being able to go to get the
15 equipment or the office was closing their
16 doors and we weren't able to retrieve in a
17 timely manner to retrieve the equipment.

18 Q. Have you done any investigation
19 to determine how often HAN told the practice
11:10 20 to keep the equipment over the last several
21 years?

22 A. No.

23 Q. How would you determine that if
24 you wanted to?

Amy Finley, 3/20/2014

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1 A. I'm not really sure off the top
2 of my head. Quite honestly, I'd have to
3 think about that.

4 Q. Might not be able to?

5 A. Might not be able to, right.

6 Q. And if I'm reading this comment
7 correctly, it looks like arrangements had
8 been made for HAN to remove the equipment,
9 and then it didn't show up when it was
11:11 10 supposed to, right?

11 MR. BERNAY: Object to the form.
12 You can answer, and take your time looking at
13 the document.

14 A. Okay. I'm sorry, could you
15 repeat the question?

16 Q. Sure.

17 MR. O'BRIEN: Could you read it
18 back, please.

19 (Record read by Reporter.)

11:11 20 A. It looks like we had a date set,
21 yes, to have a technician come to the area --
22 or come to the site.

23 Q. And then it didn't happen,
24 right?

Amy Finley, 3/20/2014

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1 A. It didn't happen.

2 Q. And then at the end you write to
3 Ms. McGauvran, "If you don't mind, if RHN
4 removed our equipment, explain that we are in
5 litigation with them, and since they were not
6 authorized to handle our equipment, the
7 practice is now liable for getting the
8 equipment back to us," do you see that?

9 A. Yes.

11:12 10 Q. "Advise they may want to contact
11 RHN since they forced them to breach their
12 contract, yada, yada," do you see that?

13 A. Yes.

14 Q. "If you prefer I do it, that is
15 fine," I guess you wrote to, but I think you
16 meant so, "so I will call tomorrow," do you
17 see that?

18 A. Yes.

11:12 19 Q. You're instructing Ms. McGauvran
20 to call the practice back and tell the
21 practice that HAN's in litigation with
22 ContextMedia, right?

23 A. Yes, that's what it says.

24 Q. And that's a false statement, is

Amy Finley, 3/20/2014

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1 it not?

2 A. Yes, I know that now.

3 Q. Well, in March of 2011, did you
4 believe that HAN and ContextMedia were in
5 litigation?

6 A. I, obviously, used the wrong
7 terminology. I know we sent a cease and
8 desist letter to ContextMedia, so I'm not
9 really sure where I came up with the term
10 litigation, if it was something that was told
11 to me, that is where I came up with it. I
12 will be honest, I don't recall.

13 Q. Okay.

14 A. But I know that it was not the
15 correct term.

16 Q. Was it your --

17 A. Now I do.

18 Q. Was it your thought to make sure
19 that someone said to the practice something
20 negative about ContextMedia?

21 A. No.

22 Q. By saying that you're in
23 litigation suggests, does it not, that
24 ContextMedia had done something wrong?

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Amy Finley, 3/20/2014

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1 A. Yes.

2 Q. And when you said -- advised
3 them they may want to contact RHN since they
4 forced them to breach their contract, yada,
5 yada, what do you mean by yada, yada?

6 A. Forced them to breach their
7 contract, our contract, by basically not
8 following the 30-day notice policy that we
9 have, and the notice that only PatientPoint
10 or Healthy Advice was authorized to service
11 and remove the equipment.

12 Q. That's what yada, yada means?

13 A. I believe that's what I meant at
14 the time.

15 Q. Is that --

16 A. But obviously I can't recall
17 100 percent since that was a couple of years
18 ago.

19 Q. Isn't saying yada, yada like
20 saying blah, blah, blah?

21 A. Sure.

22 (Exhibit 38 identified.)

23 Q. This is another e-mail exchange
24 involving the same practice. And now the note

Amy Finley, 3/20/2014

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1 says, "Josh," that's the practice, right?

2 A. Yes.

3 Q. "Called in, person from HAN
4 explained that HAN is currently in litigation
5 with RHN," right?

6 A. Yes, that's what it says.

7 Q. And that was a false statement,
8 right?

9 A. Correct.

11:15 10 Q. And your response is, "Great
11 job, Heather!", right?

12 A. Yes.

13 (Exhibit 39 identified.)

14 Q. This is 39. This is an e-mail
15 exchange involving you early on and then
16 later on some others in the company, right?

17 A. Yes, it appears.

18 Q. And it begins with a comment
19 from the practice or where it indicates that
11:16 20 "The practice switched to ContextMedia
21 because of a \$100 AmEx card," right?

22 A. Yes.

23 Q. In other words, she told you --
24 told HAN she really didn't care about the

Amy Finley, 3/20/2014

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1 content or anything else, right?

2 A. Yes, that's what it appears
3 she's --

4 Q. It goes on to repeat that she
5 was fine with switching strictly because of a
6 \$100 gift card, right?

7 A. Yes.

8 Q. And then you write up to Brewer
9 and McAllister, who is the COO, right?

11:17 10 A. Correct, got it right.

11 Q. "Isn't there someone we can
12 report them to? They are basically buying
13 their locations."

14 A. Correct.

15 Q. And later Ms. Schnell writes to
16 Linda Ruschau, who is Linda Ruschau?

17 A. Linda Ruschau is one of the
18 salespeople for the -- that sells to the
19 pharmaceutical companies.

11:17 20 Q. On the sponsor side?

21 A. Sponsor side.

22 Q. Is she part of the executive
23 team?

24 A. Yes, she is.

Amy Finley, 3/20/2014

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1 Q. And she's writing -- Linda
2 Ruschau, Mike McAllister, Ms. Schnell --
3 who's Ms. Schnell?

4 A. Debbie Schnell was the EVP over
5 the client sales team sponsors, the sales
6 reps had sold into the sponsors.

7 Q. So she's on the executive team,
8 too?

9 A. She's on the executive team. Was
10 on the executive team. She's no longer with.

11 Q. Do you know why she is no longer
12 with the company?

13 A. No, I do not.

14 Q. And Ms. Schnell writes, "What
15 they are doing is not illegal according to
16 the court of the law. Only the PhRMA code
17 guidelines and FDA." Did someone ever tell
18 you that?

19 A. What, that?

20 Q. I guess there's many pieces
21 there, let me break it down. Did someone
22 ever tell you that it was not illegal?

23 MR. BERNAY: Object to the form
24 of the question.

Amy Finley, 3/20/2014

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1 A. Well, I would say yes because I
2 received this e-mail.

3 Q. Well, I'm not sure you did.

4 A. Yes, I did.

5 Q. Oh, yes, you did, I'm sorry.

6 A. Yes.

7 Q. I'm sorry, your name is at the
8 top, I apologize.

9 A. Yes, it is.

11:18 10 Q. Okay. So someone did tell you
11 it was not illegal?

12 A. They did tell me it was not
13 illegal.

14 Q. But you also were told, at least
15 at this point in time, that they were
16 violating some PhRMA code guidelines in the
17 FDA, right?

18 A. I was told that, yes.

11:18 19 Q. And you later learned that
20 wasn't true either, right?

21 A. Honestly, no, I've never really
22 confirmed that that was not necessarily true.

23 Q. And there's a reference in here
24 to J3. Do you know who J3 is?

Amy Finley, 3/20/2014

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1 A. I do not. I know it's an
2 organization that Pharma works with, but I
3 don't know really know what they do.

4 Q. Did you understand when you got
5 this at the time that HAN was planning to
6 approach a sponsor or potential sponsor to
7 suggest that ContextMedia was engaged in some
8 sort of wrongful conduct?

9 A. I don't know what their -- I
11:19 10 didn't know what their intention was with it,
11 honestly.

12 Q. You never interact with
13 sponsors, right?

14 A. I don't. That's the one side of
15 the business I'm really not privy to.

16 (Exhibit 40 identified.)

17 Q. Let's mark this as 40. I've
18 handed to you and your counsel what's been
19 marked as Defendant's Deposition Exhibit 40.

11:20 20 This is another comment being put in CMS,
21 October 11, 2011. And it looks like it is
22 sent from Ms. Brewer to you and Mr.
23 McAllister, right?

24 A. Yes.

Amy Finley, 3/20/2014

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1 Q. And you're right, there's stuff
2 on the back, it looks like -- it doesn't
3 actually begin with the forwarding of a
4 comment, I stand corrected. It starts off
5 with Kim Coar, who's Kim Coar, do you know?

6 A. Kim Coar is a sales rep on the
7 sponsor side.

8 Q. And it goes to Bruce Lee, and
9 don't tell me he's a martial artist.

11:20 10 A. I don't know who Bruce Lee is. I
11 know who that Bruce Lee is, but I don't know
12 this Bruce Lee.

13 Q. And copy to Debbie Schnell and
14 Mike McAllister, and then Mike forwards it to
15 you, right?

16 A. Em-hm.

17 Q. And then it looks like forwards
18 it to you and Ms. Brewer, and then Ms. Brewer
19 forwards the comment up to Mr. McAlister and
11:21 20 you.

21 A. Em-hm.

22 Q. And in the e-mail that starts
23 this all off, Mr. Lee writes, "Context --" in
24 the middle there, "ContextMedia has blatantly

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Amy Finley, 3/20/2014

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1 defied the FDA and Pharma code guidelines,"

2 do you see that?

3 A. Yes.

4 Q. I think you -- from your prior

5 answer, you never learned that that was

6 false, did you?

7 A. No.

8 Q. Okay. Nothing else on that.

9 A. Okay.

11:22 10 (Exhibit 41 identified.)

11 Q. Marking Exhibit 41, here's

12 another e-mail exchange concerning the loss

13 of a practice by HAN to ContextMedia, right?

14 MR. BERNAY: Take your time to

15 review the document.

16 Q. Oh, please.

17 A. Yeah, this is a long one. Okay.

18 Q. The question that was pending

19 was something like this, doesn't this e-mail

11:24 20 exchange involve another situation where HAN

21 is being informed of a practice switching out

22 to ContextMedia?

23 A. Yes.

24 Q. And in this situation, HAN was

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1 notified that the practice was switching,
2 right?

3 A. Correct.

4 Q. And HAN was given the
5 opportunity to go out and pick up its
6 equipment, right?

7 A. Yes.

8 Q. And then HAN didn't do it -- at
9 least, didn't do it on a timely basis, right?

11:25 10 A. Yeah. I can't tell from this if
11 we removed the equipment or if the equipment
12 was already removed and we were just going to
13 pick it up.

14 Q. Okay. One or the other?

15 A. One or the other.

16 Q. And then on the first page you
17 ultimately write to your -- was Kim Theiss
18 your boss at this time, June 2012?

19 A. I believe so.

11:25 20 Q. And you wrote, "I know Nicole
21 was handling this, but this does not make us
22 look good in the eyes the practice or the
23 competitor," do you see that?

24 A. Yes, I do see that.

Amy Finley, 3/20/2014

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1 Q. What did you mean by that?

2 A. Meaning that if a technician
3 doesn't show up when they're supposed to,
4 obviously, we don't look good.

5 Q. I can understand that that would
6 not make you look good with the practice, but
7 why did you also feel it doesn't make you
8 look good with ContextMedia?

9 A. Well, because if they were aware
11:26 10 of that situation, which being that they were
11 switching to ContextMedia, then they would
12 also then state that they believe that we
13 have an issue with our service or something
14 of that sort.

15 Q. All right. You understand, do
16 you not, that ContextMedia didn't always take
17 down the HAN equipment, did it?

18 A. No, it did not always.
19 (Exhibit 42 identified.)

11:27 20 Q. I have handed to you and your
21 counsel what's been marked as Defendant's
22 Exhibit 42. You're not on this.

23 A. No.

24 Q. Do you recall ever seeing this

Amy Finley, 3/20/2014

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1 before today?

2 A. No.

3 Q. Take whatever time you read
4 it -- want to read it, but when you're done
5 doing that, the question I want you to
6 answer, if you could, does this involve a
7 practice switching from HAN to ContextMedia?

8 A. Okay. Yes, it appears that they
9 were switching from Healthy Advice to
10 Context.

11 Q. And the reason I ask that is,
12 the comment starts off, "Hey, we're going
13 with us, and then doc went to conference
14 decided to go with RHN," so when I read that
15 it wasn't clear to me if they already had HAN
16 installed or rather instead they signed up
17 your agreements and then the guy decided to
18 go with ContextMedia instead.

19 A. Not being able to see all of the
20 details on the location, it's hard for me to
21 explain, but it could be they moved and we
22 were trying to reinstall in a new location.

23 Q. Gotcha.

24 A. And, therefore, she was trying

Amy Finley, 3/20/2014

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1 to schedule the reinstallation.

2 Q. Let me ask a different question.

3 This CMS database, does it simply include
4 practices that have signed up with HAN and
5 then installed, or does it also include
6 instances where competitors are in a
7 head-to-head contest for a practice that
8 doesn't have anything at that point in time?

9 MR. BERNAY: Object to the form.

11:29 10 You can answer.

11 Q. Do you understand my question?

12 A. That, basically, that we've
13 pitched?

14 Q. Right.

15 A. We both have pitched. At one
16 point it did capture pitched locations. I
17 don't recall if it was -- if they really put
18 in there if they were up against someone.

11:30 19 They just used it as a way to say when they
20 pitched a location versus to when it was
21 actually sold.

22 Q. You said at one point in time.

23 Did you stop doing that at some point in
24 time?

Amy Finley, 3/20/2014

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1 A. Yes.

2 Q. Kind of clutters up the
3 database, doesn't it?

4 A. Yes, it does.

5 Q. What was Ms. Grippo's position
6 at the time, if you know?

7 A. I believe at this point Lisa was
8 the manager over the -- what would it be, the
9 northeast side of the region. She was a sales
10 manager.

11 Q. Sales to practices?

12 A. Sales to practices.

13 Q. I understand she lives in New
14 York; is that your understanding?

15 A. Yes.

16 Q. Does this part of HAN's
17 business, is it divided into geographic
18 regions?

19 A. Yes.

20 Q. Are people out in the regions
21 working?

22 A. Yes.

23 Q. I see. And are they working from
24 their home or do you have offices in the

Amy Finley, 3/20/2014

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1 regions?

2 A. Well, they work from home, but
3 they're out in the field visiting practices.

4 Q. Do you recall hearing from time
5 to time that practices had decided to go with
6 ContextMedia over HAN because the doctor had
7 seen something about ContextMedia at a
8 conference?

9 A. I don't -- I do recall them
10 seeing them at a conference, yes, I do.
11 Actually, I do remember that.

12 Q. Do you also recall practices
13 going with ContextMedia over HAN because
14 ContextMedia had some bilingual content?

15 A. No, I do not.

16 Q. Do you recall the number of
17 practices going with ContextMedia over HAN
18 because ContextMedia's offering in the
19 diabetes area was content specific?

20 A. Yes.

21 Q. And do you read this comment to
22 say that Ms. Mallicote?

23 A. Ms. Mallicote.

24 Q. Ms. Mallicote tried hard to keep

Amy Finley, 3/20/2014

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1 this practice or save this practice?

2 A. It also appears she was still
3 trying.

4 Q. Okay.

5 A. Is the way I read this, and was
6 asking for suggestions.

7 Q. And in response to that, Ms.
8 Grippo said she's, "got a ton of supporting
9 information for choosing HAN over
10 ContextMedia," right?

11 A. That what it says, yes.

12 Q. Do you know what she's referring
13 to?

14 A. Could be just our sales
15 collateral of what our program entails, the
16 value of our program.

17 Q. And, "This physician says he's
18 looked at the content that both companies and
19 likes ContextMedia hands down better," right?

20 A. That's what it says.

21 (Exhibit 43 identified.)

22 Q. You told me a moment ago that
23 you don't feel like you've ever seen an
24 entire ContextMedia loop, but just pieces of

Amy Finley, 3/20/2014

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1 it from time to time?

2 A. Yes.

3 Q. This question has nothing to
4 with it, it just popped in my head.

5 A. Oh, sorry.

6 Q. Back in 2011 or 2012, did you
7 have a personal opinion as to which content
8 was superior, ContextMedia versus HAN, or did
9 you feel you weren't in a position to judge
10 having not seen an entire loop?

11 A. I would say that I believe that
12 our content was superior. I mean, I
13 definitely believe in our products and what
14 we offer and the patient education we
15 provide. I believe we have a great creative
16 department. They believe in what they do.
17 We have medical advisory boards that are
18 reviewing our content. So I do believe that
19 our content, you know, is valuable.

20 Q. Kind of expected that answer.

21 A. Okay. Good.

22 Q. I have now shown you and your
23 counsel what's been marked as Defendant's
24 Exhibit 43. This is another e-mail exchange,

Amy Finley, 3/20/2014

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1 again, one that you're not on, but take your
2 time to read it, and my question for you when
3 you're ready, is this another comment in the
4 database explaining why a practice is
5 switching from HAN to ContextMedia?

6 A. Yes.

7 Q. Here the practice is telling HAN
8 that they've done their research, right?

9 A. Yes.

11:34 10 Q. And they decided to go with
11 ContextMedia's diabetes product because it's
12 programming specifically for diabetes, right?

13 A. Yes.

14 Q. And at that point in time, HAN
15 didn't have a truly competitive product, did
16 it? By that, I mean, it didn't have a
17 product that was diabetes specific?

18 A. That was diabetes specific, no.

11:35 19 Q. Does it have one now that's
20 diabetes specific?

21 A. No.

22 (Exhibit 44 identified.)

23 Q. Let's mark this as 44. This is
24 another exchange that you do not appear to be

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1 on, but same kind of questions. Take whatever
2 time you want to look at it. I'm asking you
3 if this is another internal HAN exchange
4 describing why a practice is switching from
5 HAN to ContextMedia?

6 A. Yeah, okay. Yes, this is an
7 exchange between Collette and Amanda.

8 Q. Is this a document you saw as
9 part of your preparation for your deposition?

11:37

10 A. No.

11 Q. Pardon me if I already asked you
12 this. Did you review the CMS database
13 entries as part of your deposition
14 preparation?

15 A. No.

16 Q. With respect to this exhibit,
17 Exhibit 44, the longer e-mail that is on the
18 first page of the document comes from
19 Collette Brady, do you know who Collette
20 Brady is?

11:37

21 A. She was a sales rep on the
22 physician side, physician office side.

23 Q. Someone that reported up to you?

24 A. She reported to Amanda.

Amy Finley, 3/20/2014

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1 Q. And Amanda reported to you?

2 A. Amanda reported to Jill Brewer.

3 Q. Okay. You told me this before --

4 A. Yes.

5 Q. -- this is on the sales side,

6 and you're on the sort of the --

7 A. The sales side.

8 Q. -- care taking?

9 A. More of the operation side.

11:37

10 Q. Right.

11 A. Yes.

12 Q. And here it's being reported
13 that the physician told HAN it looked at both
14 the HAN program and the ContextMedia program
15 and decided to go with ContextMedia because
16 the program has sound, right?

17 A. Yes.

18 Q. And this is something you heard
19 more than once, right?

11:38

20 A. I have heard it more than once,
21 yes.

22 Q. And Ms. Brady writes, "In the
23 context of trying to save the practice,
24 there's not really much I can do at this

Amy Finley, 3/20/2014

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1 point since that's not something we can
2 change," right?

3 A. That's what she says, yes.

4 Q. Well, that was true, was it not?
5 I mean, you couldn't provide more sound at
6 that point in time, right?

7 A. I wouldn't say that that wasn't
8 true, we probably could, but.

9 Q. As much as ContextMedia
11:38 10 provided?

11 A. I believe that anything was
12 possible, but it wasn't my decision to make
13 that, you know.

14 Q. Right. It wasn't happening
15 then, was it?

16 A. It wasn't happening then, no.

17 Q. When did it start happening that
18 you increased significantly the amount of
19 sound --

11:38 20 A. I would say last year.

21 Q. 2013?

22 A. 2013.

23 Q. What, can you tell me which
24 quarter?

Amy Finley, 3/20/2014

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1 A. No, I can't.

2 MR. JAHN: Pardon me, Counsel,
3 we're off the record.

4 (Break taken.)

5 MR. JAHN: We're on the record
6 with DVD No. 2.

7 (Exhibit 45 identified.)

8 Q. Same deal, take what time you
9 want to look at it, then when you're ready to
10 answer, my question for you, is this another
11 e-mail exchange involving a practice
12 switching from HAN to ContextMedia?

13 A. Okay.

14 Q. Now, this involves a situation
15 where, according to this e-mail, HAN
16 removed -- excuse me, ContextMedia removed
17 HAN's equipment without telling HAN, right?

18 A. I missed that part. Yes.

19 Q. And that's something you had an
20 issue with, right?

21 A. Yes.

22 Q. And you felt that, to the extent
23 ContextMedia communicated to a practice that
24 they were authorized by HAN to remove the

Amy Finley, 3/20/2014

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1 equipment, that was a false statement?

2 A. That was a false statement.

3 Q. But the comment goes on to
4 disclose the reasons the practice, in fact,
5 switched from HAN to ContextMedia, does it
6 not?

7 A. Yes.

8 Q. And one of the reasons was
9 sound, right?

11:42 10 A. Em-hm, yes.

11 Q. And another reason was cooking
12 segments that focused on foods that are good
13 for people suffering from RA, right?

14 A. That's what it states, yes.

15 Q. And how to cook when you suffer
16 from RA, right?

17 A. Yes.

18 Q. Did you know back then that
19 among the offerings in ContextMedia's content
11:42 20 were actual cooking instructions? That is,
21 someone live, kind of Julia Child's like?

22 A. Yes.

23 Q. And that's something HAN didn't
24 provide at the time, right?

Amy Finley, 3/20/2014

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1 A. Right.

2 Q. And another reason the practice
3 switched was that Con's loop was an hour and
4 a half, right?

5 A. Yes, that's what it states.

6 Q. And at this point in time, HAN's
7 loop was 30 minutes, right?

8 A. Yes.

9 Q. And another reason the practice
11:43 10 switched was the patients were complaining to
11 the practice, right?

12 A. Again, yes, that's what it
13 states.

14 Q. And they were complaining that
15 HAN's offering had no sound and it was
16 boring, right?

17 A. Yes.

18 (Exhibit 46 identified.)

19 Q. I've handed you and your counsel
11:44 20 what's been marked as Exhibit 46. This is
21 Tina. I don't see the last name. What's
22 Tina's last name?

23 A. Grieshop.

24 Q. Tina Grieshop forwarding up to

Amy Finley, 3/20/2014

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1 you another comment about a practice, the
2 practice's reasons for switching from HAN to
3 ContextMedia, right?

4 A. Yes.

5 Q. And this is another situation
6 where apparently ContextMedia told the
7 practice that ContextMedia could remove the
8 equipment and return it to HAN, right?

9 A. Yes.

11:45 10 Q. And, again, that's something you
11 had a problem with, right?

12 A. Correct.

13 Q. The practice went on to advise
14 ContextMedia of the reason it was switching,
15 right?

16 A. The practice advised
17 ContextMedia?

18 Q. I'm sorry. I get -- it happens
19 eventually. The practice advised HAN as to
11:45 20 why they were switching, right?

21 A. I'm not seeing that.

22 Q. Look toward the end of the
23 comment.

24 A. More informative, okay. Yes, I

Amy Finley, 3/20/2014

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1 see that.

2 Q. It's reported that Tina asked
3 the practice what was the doctor's reasons
4 for going with --

5 A. Right.

6 Q. -- ContextMedia, right?

7 A. Yes.

8 Q. And then --

9 A. As we always do.

11:45 10 Q. And the reason was the doctor
11 felt ContextMedia was more informative,
12 right?

13 A. That's what they said, yes.
14 (Exhibit 47 identified.)

15 Q. Now, this is a February 28,
16 2011, exchange between you and the
17 president -- oh, you and the CEO of the
18 company, right?

19 A. COO.

11:46 20 Q. Thank you.

21 A. Yes.

22 Q. Pardon me if I already asked you
23 this too. Is Mr. McAllister still with the
24 company?

Amy Finley, 3/20/2014

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1 A. No.

2 Q. Do you know why he left?

3 A. No.

4 Q. Do you know when he left, in a
5 year?

6 A. I think so. I believe it was --
7 I don't know the date for sure, so.

8 Q. And the COO of the company is
9 asking you, with the subject being RHN?

11:47 10 A. Yes.

11 Q. "Do offices who took this say
12 why they liked their versus ours," right?

13 A. Yes.

14 Q. And, again, you're going to do
15 the best you can to be truthful and
16 forthright and accurate with the COO, right?

17 A. Yes.

18 Q. And you report, "We are hearing
19 sound, cooking segments and recipes," right?

11:47 20 A. Yes.

21 Q. And you go on to say, "Some have
22 just said the doctors like the overall
23 content better than ours."

24 A. Right. They were more vague.

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1 Q. More vague?

2 A. The practices were more vague.

3 Q. Because overall content isn't as
4 specific as sound, cooking segments and
5 recipes?

6 A. Right, correct.

7 (Exhibit 48 identified.)

8 Q. Here we have another e-mail
9 exchange internal to HAN discussing why a
10 practice was switching from HAN to
11 ContextMedia, right?

12 A. Yes.

13 Q. And you write to the practice
14 relations team on March 2, 2011, and that's
15 the whole team that interacts with the
16 practices?

17 A. Yes.

18 Q. First you congratulate Lori for
19 doing an excellent job, and then you go on to
20 say, "As you all know, ContextMedia has been
21 trying to push us out the door. They finally
22 understand they cannot remove our equipment
23 so they're pushing the offices to call and
24 get it removed under the 30 days," do you see

Amy Finley, 3/20/2014

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1 that?

2 A. Yes.

3 Q. And when you said, trying to
4 push us out the door, what did you mean?

5 A. That they were trying to switch
6 out their program with ours.

7 Q. And that's okay, right?

8 A. Yes, if they go through the
9 proper methods of doing it, yes.

11:49 10 Q. You're not opposed to
11 competition, right?

12 A. I'm not opposed to competition,
13 just opposed to handling the equipment that
14 they're not authorized to handle.

15 Q. Okay. And about this point in
16 time, were you noticing that ContextMedia was
17 allowing the practices to notify HAN to
18 remove the equipment, but at the same time
19 pushing the practices to try to get you to
11:49 20 take the equipment out sooner than 30 days,
21 right?

22 A. Yes, that's what it states. And
23 this would be about the time we sent the
24 cease and desist, I believe.

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1 Q. Was that your experience going
2 forward then, the balance of 2011?

3 A. I don't recall the actual
4 balance, but I know it continued of them
5 removing the equipment without our
6 authorization after this, so.

7 Q. That ContextMedia continued or
8 that --

11:50

9 A. That ContextMedia continued to
10 remove our equipment without authorization
11 from PatientPoint.

12 Q. And then Liz Billmann concludes
13 the chain by writing to you on March 3. Liz
14 Billmann.

15 A. Liz Billmann.

16 Q. Who is Liz Billmann?

17 A. Liz Billmann was a relationship
18 manager on my team.

11:50

19 Q. I see. So you wrote to the full
20 team, that's how she gets it, right?

21 A. Correct, and then she responded
22 back to myself and the team.

23 Q. And she tells yourself and the
24 team, "This is interesting feedback because I

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1 spoke with a rheumatologist yesterday who
2 felt our information was 'silly and
3 demeaning'", do you see that?

4 A. Yes.

5 Q. And then he -- according to Ms.
6 Billmann gives -- the doctor gives an example
7 or an example of -- two examples as to why he
8 thinks that, right?

9 A. Yes, that's what it states.

11:51 10 Q. And do you recall at the time
11 that part of your content included
12 grandparents playing with their
13 grandchildren?

14 A. I could not recall what our
15 content included at that time in 2011.

16 Q. And you also don't recall the
17 peppermint segment?

18 A. I don't recall that, no.

19 Q. And Ms. Billmann writes "(I have
11:51 20 had other complaints about)," right?

21 A. That's what she rights, yes.

22 Q. But that's not something you
23 would remember?

24 A. The complaints about the

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1 segments?

2 Q. Yeah, practices complaining
3 about the segments.

4 A. No, I do not.

5 Q. I'm kind of curious, with no
6 video in your content in March of 2011, how
7 would your content have information about --
8 well, strike that. I guess it's possible.
9 Never mind.

11:52 10 (Exhibit 49 identified.)

11 Q. This is another comment being
12 reported up to you about the reason a
13 practice was switching from HAN to
14 ContextMedia, right?

15 A. Yes.

16 Q. Let me know when you finish
17 reading the content.

18 A. Okay.

19 Q. Is this a situation where, after
11:53 20 the practice has decided to go with
21 ContextMedia, the practice then gave HAN the
22 30 days notice to remove the equipment?

23 A. That's what it appears as, yes.

24 Q. And HAN then did its best to try

Amy Finley, 3/20/2014

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1 to save the practice, right?

2 A. Right.

3 Q. And HAN was unsuccessful, right?

4 A. It appears that way.

5 Q. And one of the things that this
6 person did to try to save the practice was,
7 in response to hearing the practice comment
8 on ContextMedia's content, told the practice
9 that HAN was going to have some new features
10 as well, right?

11 A. Yes.

12 Q. But that they wouldn't be
13 available until later in the summer, right?

14 A. That's correct.

15 Q. And then it's reported that's
16 the real reason they're cancelling, right?

17 A. I believe so. That's what they
18 stated to us.

19 (Exhibit 50 identified.)

20 Q. Let me show what's been marked
21 as Defendant's Exhibit Exhibit 50. This is
22 Lori Smith reporting to you about the reasons
23 the practice switched from HAN to
24 ContextMedia in April of 2011, right?

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1 A. Yes.

2 Q. And one of the reasons was the
3 practice felt like the ContextMedia was more
4 like TV than the HAN product, right?

5 A. Yes.

6 Q. And less like a slide show,
7 right?

8 A. That's what they stated, yes.

11:55

9 Q. I think we saw an e-mail earlier
10 today, if you recall, about the practice
11 characterizing the HAN content as slide after
12 slide after slide, do you remember that?

13 A. I believe so, yes.

14 Q. And these weren't isolated
15 instances, were they? That a practice
16 characterized the HAN content as like a
17 PowerPoint or a slide show?

11:56

18 A. We never heard this before prior
19 to this actual competition with ContextMedia.
20 It's not something that we heard prior to
21 that as reasons to being cancelled as a slide
22 show. This was new for us.

23 (Exhibit 51 identified.)

24 Q. Let me hand you what's been

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1 marked as Defendant's Deposition Exhibit 51.
2 This is another practice commenting on the
3 reasons it's switching from HAN to
4 ContextMedia, right? Strike that, I think I
5 mischaracterized it.

6 A. That's what I'm seeing, they are
7 saying RHN was rather annoying, I'm seeing
8 that.

9 Q. Right, you're right. It looks
10 like it's a practice commenting about some
11 complaints it had about your service, right?

12 A. "He told me the monitor had not
13 been playing for a long time. They had their
14 IT department look into it, he said he would
15 like it fixed. He also asked me if I knew we
16 had competition, I told him I did. He said he
17 almost went with them since he hadn't heard
18 from us. He asked if we had the same
19 material, I told him how our program was
20 different and what we had to offer, and then
21 he said that -- he said they were rather
22 annoying. I told him we would be out to fix
23 the CPU and also let him know if he had any
24 issues in the future to call." So this was a

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1 site that was being approached by RHN, but it
2 doesn't appear that they had made the switch
3 at this time.

4 Q. I stand corrected, you're
5 absolutely right. He's also telling you that
6 your monitor had been not been playing for a
7 long time?

8 A. The practice stated that, yes.
9 Which we -- if the office does not call to
10 tell us the screen is black, we don't know
11 that the office -- the monitor is not working
12 because the CPU could still be connecting to
13 the home office. So, therefore, in our eyes,
14 we believe that the system is still up and
15 running. If the system is not, or it's on a
16 different channel, the practice needs to call
17 us to tell us that, or when we go out to
18 service a couple times a year, we'll pick it
19 up at that point. But in between then, it's
20 really -- we rely on the practice to let us
21 know if the system is not up and running.

22 Q. I see. So that -- I think I've
23 learned after participating in enough of
24 these depositions, your testimony is a

Amy Finley, 3/20/2014

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1 heartbeat?

2 A. Correct.

3 Q. So the CPU could be sending a
4 heartbeat while the screen is black?

5 A. Yes.

6 Q. I see.

7 A. A lot of times it could be that
8 the power was off on the monitor, but the CPU
9 was still up and running and playing.

11:59 10 (Exhibit 52 identified.)

11 Q. Handing you what's been marked
12 as Defendant's Exhibit 52. I think it -- I
13 think I have it right this time, that this is
14 an exchange about a practice switching from
15 HAN to ContextMedia, but take your time to
16 look at that and tell me whether you agree.

17 A. Okay.

18 Q. I might be wrong again. Maybe
19 this is just a practice telling you they're
12:00 20 thinking about switching, but you look at it
21 and you tell me.

22 A. Yeah, it looks like it actually
23 might still be with us. We were just working
24 on a service issue with the CPU, and then

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1 possibly offering them an upgrade, but the
2 office did see RHN at a conference. And I'm
3 not really seeing whether or not for sure if
4 they actually switched or not. At left we
5 were -- it looks like we reached out to our
6 sales rep, Lisa Grippo, for assistance on
7 talking to the practice.

8 Q. Ms. Grippo comments on the first
9 page that -- excuse me, "They have had one
10 service issue after the other," do you see
11 that?

12 A. Yes.

13 MR. O'BRIEN: What do you guys
14 want to do about lunch? When do you want to
15 break for that? What's your pleasure?

16 THE WITNESS: What time is it
17 now?

18 MR. BERNAY: It's just past noon.

19 THE WITNESS: If we could go to
20 like 12:30.

21 MR. O'BRIEN: Okay.

22 MR. BERNAY: Do you want to keep
23 going?

24 THE WITNESS: Is that okay?

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1 MR. O'BRIEN: Yeah, that's fine.

2 THE WITNESS: Get it done.

3 MR. O'BRIEN: If I can figure out
4 what's going on with my throat.

5 (Exhibit 53 identified.)

6 Q. Is Exhibit 53 a document
7 commenting on why a practice is changing from
8 HAN to ContextMedia?

12:02

9 A. It doesn't really clearly state
10 whether or not they actually switched, but it
11 appears that they obviously were interested
12 in ContextMedia.

13 Q. And it indicates that "the
14 doctor's interested because he likes
15 ContextMedia's program better," right?

16 A. Yes, that's what it states.

17 Q. "Finds it more interactive,"
18 right?

12:03

19 A. They told -- yes, that's what
20 they told them.

21 Q. And it's noted after "more
22 interactive (different vignettes) with
23 physicians and PAs discussing various
24 conditions," do you see that?

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1 A. Yes.

2 Q. And you understand that's a
3 description of some of the video content of
4 ContextMedia's content, right?

5 A. Different vignettes, yes.

6 Q. And then, "The practice also
7 prefers the fact that ContextMedia has three
8 different sections to its screen," right?

9 A. Yes.

12:03 10 Q. And that's not something HAN
11 offered at the time, right?

12 A. Not in rheumatology, no.

13 (Exhibit 54 identified.)

14 Q. This is Deposition Exhibit 54.
15 Now, in this July 12, 2011, e-mail, Ms. Smith
16 sends a comment out of the database to create
17 a feedback, do you see that?

18 A. Yes.

12:04 19 Q. And do you know what that is,
20 create a feedback?

21 A. It's an e-mail distribution with
22 our creative team that receives the e-mails
23 on feedback that we receive on our programs.

24 Q. So this is an instance where HAN

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1 is using information it learns from practices
2 about how it judges HAN's content versus a
3 competitor's to get it to the creative people
4 to enable them, as they see fit, to respond
5 and make adjustments, that type of thing?

6 A. Correct.

7 Q. It's important information for
8 them to have to see if they want to do
9 anything in reaction to their content?

12:05 10 A. Right. Our job is to make sure
11 the people know what we're hearing from
12 practices.

13 Q. She writes, she did, "did not
14 mention their technical issues at all." Do
15 you know what she means by that, Ms. Smith?

16 A. I don't know what -- I would
17 believe that she means that, if they had
18 technical issues, she -- they did not mention
19 that or see that as an issue.

12:05 20 Q. This indicates that the decision
21 to go with ContextMedia was actually made,
22 right?

23 A. Yes.

24 Q. And sound was one factor, right?

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1 A. I believe it said that. Yes,
2 yes.

3 Q. And then Ms. Smith, as we've
4 seen before, hearing that, places the sound
5 inquiry?

6 A. Correct.

7 Q. It's also noted that, "many of
8 the patients in this practice are elderly and
9 are slow readers," right?

12:06 10 A. That's what it says.

11 Q. And to benefit from HAN's
12 content in July of 2011, you had to read the
13 content, right?

14 A. Yes.

15 (Exhibit 55 identified.)

16 Q. This is now Defendant's
17 Exhibit 55, and this is another e-mail
18 exchange regarding the reasons a practice is
19 switching from HAN to ContextMedia, right?

12:06 20 A. Yes.

21 Q. And Lisa tells -- is this a
22 comment you're receiving or --

23 A. This is me. This looks like it's
24 mine. It's from me.

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1 Q. You roll your sleeves up here.

2 A. Yes, it was coming in by Amy
3 Finley, so, yes, it was me. I actually --

4 Q. It is you, right?

5 A. Yes.

6 Q. By the way, it seems like a lot
7 of these comments, after they're put in, are
8 then kicked up to you. Was that part of the
9 protocol, then, as well, that you, sort of as
10 the boss, wanted to know when we got
11 information as to why a practice switched to
12 ContextMedia in particular?

13 A. Yes, to keep me informed or --
14 of any type of situation where they would
15 hear something that they think that I should
16 be aware of that to -- for me to then, maybe,
17 inform the creative team or the executive
18 team or whatnot.

19 Q. What I'm getting at is, you told
20 me earlier that once ContextMedia came on the
21 competitive landscape, or I think your words
22 were actually sort of "touching our
23 equipment," you instructed Lori to be sort of
24 the point of contact to do the database for

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1 her to try to take those calls if possible.
2 And I'm wondering if part of that same
3 protocol was also kick up to me, Amy Finley,
4 any comments about switches to ContextMedia?

5 A. I don't know if I requested to
6 have every comment switched -- or kicked up
7 to me. But a lot of times, especially even
8 Lori would just send them to me to keep me in
9 the know.

12:08

10 Q. Okay.

11 A. Obviously, this situation, it's
12 my comment. I'm giving it to Lori, reverse
13 roles.

14 Q. There's that TV show where the
15 boss is a worker or something?

16 A. Yeah, Undercover Boss.

17 Q. Okay. So the doctor tells you
18 that -- his view, the content is not
19 engaging, right? Or, no, he feels their
20 content is more engaging?

12:09

21 A. Correct.

22 Q. And "the doctor preferred
23 ContextMedia's ratio of content to
24 advertising," right?

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1 A. That's what they stated, yes.

2 Q. And you told the practice that
3 ContextMedia can't remove the equipment,
4 right?

5 A. Yes.

6 Q. And she said fine, and you
7 scheduled a removal date, right?

8 A. Correct.

12:09

9 Q. Any reason to believe that
10 didn't go down as planned?

11 A. No, no reason to believe that,
12 no. This would be the proper channels of --
13 the proper process of handling a cancel.

14 Q. So from your perspective, this
15 was an example of fair competition versus
16 unfair?

17 A. Correct.

18 MR. BERNAY: Object to the form.
19 You can answer.

12:10

20 A. Correct.

21 Q. During the 2010-2013, early 2013
22 time frame, do you have a way of determining
23 which of the ContextMedia switch outs in your
24 view were the results of fair competition and

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1 the result of unfair competition?

2 MR. BERNAY: Object to the form.

3 You can answer.

4 A. I don't -- I don't know.

5 (Exhibit 56 identified.)

6 Q. Another example, is it not, of a
7 practice switching from HAN to ContextMedia?

8 A. Yes.

9 Q. And the comment from Melissa

12:11 10 Lake is, "I tried to save this location,"
11 right?

12 A. Yes.

13 Q. "But the practice said the
14 doctor's already decided to go with
15 ContextMedia," right?

16 A. That's what it states, yes.

17 Q. And so Melissa asked the
18 practice why, right?

19 A. Yes.

12:11 20 Q. The response was, "The practice
21 felt that the ContextMedia product was geared
22 more for arthritis," right?

23 A. Yes.

24 Q. Did, in 2011, HAN have a

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1 arthritis specific product?

2 A. Yes.

3 Q. But it was not video, right?

4 A. Not video, it was media, yeah.

5 Q. Okay.

6 A. It was on a media player. It
7 was not a slide show.

8 Q. But it wasn't --

9 A. It wasn't like a TV --

12:12 10 Q. Right.

11 A. -- segment, no.

12 Q. Vignettes and things like that?

13 A. Correct. But our content was
14 geared toward arthritis.

15 Q. Okay. And then Melissa is
16 congratulated for trying to save the site and
17 for understanding why, and then Lawrence
18 says, "Good job, Melissa," and then Melissa
19 writes back, "Ah, thanks, but they're going
12:12 20 to cancel," right?

21 A. Yes.

22 Q. That, and Ms. Lawrence writes,
23 "I know, but, but," right?

24 A. That's what it -- that's what it

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1 states, yes.

2 Q. I mean, was your group getting a
3 little discouraged in this time frame with
4 the frequency of practices switching and the
5 inability to respond?

6 A. There would be sometimes, yes,
7 where it would happen in spurts. I wouldn't
8 say it was all the time, but you would get a
9 peak moment where you would tend to see some
10 that were switching or being removed at
11 different times.

12 Q. But when practices are telling
13 you about all these things they preferred
14 about ContextMedia's content, and in many
15 instances they were things you guys couldn't
16 provide just yet?

17 A. Just yet, correct.

18 Q. Was that sort of hard on the
19 morale of your group?

20 A. Well, that's where that was my
21 job and Heather's job to continue to
22 reiterate and remind them the value of our
23 program and what we have to offer. So, you
24 know, we just had to keep continuing to do

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1 that so that they understood. And a lot of
2 them did. I mean, they knew and really do
3 believe in our program and our products, so.

4 Q. You agree that, at this point in
5 time, the content of ContextMedia's product
6 and the content of HAN's product was
7 different, right?

8 A. Yes.

9 Q. And it was quite different in
10 certain respects, right?

11 A. The format in which it was
12 delivered, yes.

13 Q. So if I hear you correctly, even
14 though they were quite different, you still
15 believe your product, while different, was
16 superior?

17 A. Yes.

18 (Exhibit 57 identified.)

19 Q. This is Exhibit 57. And it is,
20 again, I believe, a internal HAN document
21 discussing the reasons a practice is
22 switching from HAN to ContextMedia, right?

23 A. Hold on, I'd like to read it
24 first.

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1 Q. Sure, sure. It's not a speed
2 test.

3 A. Okay.

4 Q. Was my characterization accurate
5 this time?

6 A. Oh, repeat that question.

7 MR. O'BRIEN: Go ahead, read it
8 back.

9 (Record read by Reporter.)

12:16 10 A. Correct.

11 Q. Here Phyllis Timole is making
12 the call, right?

13 A. Yes.

14 Q. Was she a member of your team?

15 A. She's a sales rep out in the
16 field.

17 Q. Oh. Any idea why she's calling
18 on the practice?

19 A. She could have been reaching out
12:16 20 to the practice just as a proactive measure.
21 2011, yes.

22 Q. Okay.

23 A. To try to help with just
24 touching base, seeing if the practices were

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1 engaged.

2 Q. Gotcha.

3 A. We would from time to time have
4 the sales rep.

5 Q. In addition to you all?

6 A. In addition to us, yes.

7 Q. And "The practice is switching
8 because it feels the ContextMedia product is
9 more specialty specific," right?

12:17 10 A. I'm not sure I'm seeing where.

11 Q. The back page.

12 A. Oh, okay, I see at the top. "No
13 longer interested in our program and got --
14 and more speciality specific." That's what it
15 states, yes.

16 Q. And also, "The practice felt
17 that ContextMedia offered better timely
18 correspondence and better customer service,"
19 right?

12:17 20 A. That's what it states, which I
21 believe is rare on our end.

22 Q. She said, "Our communication is
23 not connected and she seemed pretty
24 frustrated with us. One example being that,

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1 when the office had moved, it took us three
2 tries to come and pick up the equipment and
3 it didn't get done until after they had
4 moved," do you see that?

5 A. Yes, and I see in the top where
6 I'm explaining that it was due to UPS, which
7 is something we have limited control over,
8 not necessarily something we can do, but.

9 Q. Okay. But Ms. Timole writes,
10 "Unfortunately, it looks like HAN dropped the
11 ball on this one," right?

12 A. That's the way it's perceived by
13 the practice.

14 Q. "And really nothing I could do
15 to save it," she writes, right?

16 A. That's what she writes, yes.
17 But I pride ourselves on anything, it would
18 be our service, because I do think we are
19 great about corresponding. Sometimes you
20 can't control third parties to the extent
21 that you want them to, but we are usually
22 very responsive.

23 Q. And the last e-mail is yours and
24 you're actually encouraging everyone to sort

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1 of to buck up their service, right?

2 A. Of course.

3 Q. Because you write, "Everyone
4 needs to take time today to review their list
5 of tasks due today and make sure you're
6 making timely calls," right?

7 A. Correct.

8 Q. Now, you write that only to
9 Heather McGauvran and not the group e-mail,
10 is that because --

11 A. Right, because Heather runs the
12 team on the daily basis, so she manages their
13 daily work.

14 (Exhibit 58 identified.)

15 Q. This is a document we marked as
16 Defendant's Exhibit 58, and appears to be
17 another internal HAN e-mail exchange
18 regarding a practice leaving HAN for
19 ContextMedia?

20 A. Yes.

21 Q. And Ms. McGauvran is trying to
22 save the practice, right?

23 A. Correct.

24 Q. And after she sends the e-mail,

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1 the long e-mail to the practice trying to
2 save it and telling the practice that,
3 "ContextMedia has been removing our equipment
4 without authorization, thousands of dollars
5 worth of equipment has gone missing," she
6 then forwards that on to Ms. Grippo, right?

7 A. Correct.

8 Q. And she writes, "After I sent
9 Sovana the office manager this e-mail she
10 called me back within the hour, at first she
11 was quite upset, but the conversation ended
12 on amicable terms," you're not on this, so --

13 A. No, I'm not.

14 Q. -- I think I probably know the
15 answer to this question, but I'll ask it
16 anyway. Do you have any idea why the practice
17 was so upset?

18 A. I believe that the practice was
19 upset because they -- the company,
20 ContextMedia, removed the equipment without
21 our authorization. And -- or that they
22 were -- no, wait, hold on. Or that maybe
23 they were misled. Honestly, I don't know,
24 but now I realize that this -- I don't know

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1 where this stemmed from.

2 (Exhibit 59 identified.)

3 Q. This is 59. Again, this is
4 another internal HAN communication discussing
5 the reasons a practice is leaving it for
6 ContextMedia, right?

7 A. Yes.

8 Q. And the practice informed HAN
9 that they preferred ContextMedia because they
10 had sound, right?

11 A. Yes.

12 Q. And the loop was longer?

13 A. I don't believe this -- I don't
14 know if this was an active customer or if
15 this was a target customer.

16 Q. I kind of have the same question
17 of whether this --

18 A. Dawn is a sales rep, and it says
19 that she declined our program and went with
20 RHN, so I'm not sure if.

21 Q. So this may have been one of
22 those examples of a head-to-head competition?

23 A. That could have been a
24 head-to-head.

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1 Q. And it's on December 2, 2011.

2 At that point in time, were you still logging
3 what we've referred to pitches in the
4 database?

5 A. I don't recall.

6 Q. But you're looking at this, your
7 best judgment it's a head-to-head, right?

8 A. Yeah, it appears that way. I
9 can't tell. Again, just because of the
10 people involved.

12:23

11 Q. And you -- as you also pointed
12 out, though, it says declined our program,
13 not cancelled, right?

14 A. Right.

15 Q. And then Lisa writes to you at
16 the end, "Sorry to be spreading bad news on a
17 yucky Monday. I thought I would share the
18 feedback. This is a six doc practice," the
19 more doctors, the more attractive to HAN,
20 right?

12:23

21 A. Correct.

22 Q. And she writes, "This is a six
23 doc practice that we desperately needed to
24 win!" Some sort of symbol, I don't know what

Amy Finley, 3/20/2014

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1 these things are. And then it says, "So
2 frustrating," right?

3 A. That's what it says, yes.

4 Q. Do you know why she said this is
5 one we desperately needed to win?

6 A. No, I don't. Again, not knowing
7 the full context of this, it could be an
8 active customer that we were trying to save
9 and reinstall from a move, it could be a
10 brand-new location, it could be one that does
11 have the equipment up and we're continuing to
12 just try to save from moving on to someone
13 else. It's really hard to tell based on
14 what's -- what's on this document.

15 Q. Which side of the business is
16 Ms. Grippo on, you told me before but --

17 A. She's on the sales side. But
18 the other thing is we do -- like I said,
19 before, from time to time, and still the
20 reps, too, help with current customers to
21 retain them.

22 Q. Okay.

23 A. So it could be either situation
24 in this case.

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1 Q. Yeah, but, you know, the use of
2 the words "declined our program and needed to
3 win," sounds more like a head-to-head,
4 doesn't it?

5 A. It would sound that way, yes,
6 but, again, I don't know for sure.

7 Q. Are you aware of instances over
8 the period from 2010 to 2013 where
9 ContextMedia and HAN went head-to-head for a
10 practice that didn't have anything and HAN
11 won?

12 A. I believe there are, yes.

13 Q. And on the other side of the
14 coin, are you aware of practices of where
15 they went head-to-head and ContextMedia won?

16 A. Yes. And I'm also aware of there
17 are some practices where ContextMedia was
18 also removed.

19 Q. By HAN?

20 A. By HAN in the proper format and
21 procedure.

22 Q. During the 2010-2013 time?

23 A. I can't recall which. It was
24 obviously within the last few year's time

Amy Finley, 3/20/2014

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1 span.

2 Q. How do you track that
3 information internally?

4 A. That's a little bit harder to
5 track because, again, they weren't a current
6 customer and so, when we're putting them in,
7 there's really not something that we use to
8 flag or track that this was one that we
9 removed.

12:26 10 Q. There's not some big board on
11 the wall?

12 A. Right, right, there was not a
13 big board on the wall.

14 (Exhibit 60 identified.)

15 Q. I'm handing you what's been
16 marked Defendant's Deposition Exhibit 60. Is
17 this not another comment from the database
18 describing why a practice has changed from
19 HAN to ContextMedia?

12:26 20 A. Yes.

21 Q. And here the caller is Lori
22 Smith, right?

23 A. Yes.

24 Q. And she's calling and she says

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1 "to find out the reason for the cancel,"
2 right?

3 A. Right.

4 Q. And she was informed that
5 "Technology is advancing rapidly and our
6 program is still in the exact same as it was
7 when they first signed up," do you see that?

8 A. Yes.

12:27

9 Q. Was that true at the time, that
10 there had not been, as of December 2011, any
11 significant technological changes or
12 improvements in HAN's content for some time?

13 A. I don't really know what they
14 mean by the technology, because, I mean, as
15 far as the content goes, we are always
16 updating and adding new graphics and designs
17 and things to our content.

12:27

18 I think that, again, this is one
19 where we would sort of believe that they were
20 told this information, because most practices
21 really don't know the difference between
22 whether or not we're using an analog line or
23 a broadband line, but somebody could state to
24 them, if they're on analog, oh, well,

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1 they're, you know, they're using old
2 technology where everybody uses broadband
3 today. That's what I believe they're
4 referring to here, but I don't know if the
5 practice really understands that. And, again,
6 in this situation, if I recall, for the ones
7 that Lori would call, this was probably a
8 location as well that ContextMedia must have
9 removed the equipment without our
10 authorization and then -- because when that
11 happened, we still had Lori call to follow up
12 to find out why they switched.

13 Q. Sure.

14 A. Where which -- at that point,
15 I'm not sure what -- how much they were going
16 to tell us and what we were going to get from
17 them, but it was already done, the equipment
18 was already up on the wall. It's not like we
19 were thinking that we were going to be able
20 to switch them back at that point, but we
21 wanted to at least get some information and
22 understand a little bit more as to why.

23 Q. But having a content loop that
24 has human beings interacting and doing round

Amy Finley, 3/20/2014

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1 tables and providing cooking lessons and
2 stuff like that, couldn't that fairly be
3 viewed as more technologically advanced than
4 a presentation that was static?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. Honestly, I think it's really
8 just viewed as TV. It appears to be more like
9 TV, which TV has been around a long time. So
10 I don't feel that's really more technology
11 advanced than our media player that's showing
12 the graphics and design that we have on it.

13 Q. What about the ability to -- for
14 the practice to customize the content?

15 A. The ability for them to pick and
16 choose content?

17 Q. Yeah, or also to put their own
18 information up there and that kind of thing.

19 A. Well, they could do the same
20 thing on ours.

21 Q. They could?

22 A. Yes.

23 Q. Would you believe that having
24 sound is more technologically advanced than

Amy Finley, 3/20/2014

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1 not having sound?

2 A. No.

3 MR. BERNAY: It's 12:30 now, do
4 you want to break now or do you want to --

5 THE WITNESS: I can finish this
6 last one if you want and then go, that's
7 fine.

8 MR. BERNAY: Okay. One more
9 exhibit, then we'll --

12:30 10 MR. O'BRIEN: One more, okay.

11 THE WITNESS: It doesn't matter
12 to me.

13 MR. O'BRIEN: Well, actually,
14 you're the boss here, so what do you want to
15 do?

16 THE WITNESS: Oh, let's finish
17 this last one. One less we have to do when
18 we come back.

12:30 19 MR. O'BRIEN: This stack is
20 getting much smaller. I see you watching it.

21 THE WITNESS: I am watching it.

22 MR. O'BRIEN: And there's not
23 another one.

24 MR. BERNAY: I was going to say,

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1 just wait until he brings back another stack.

2 MR. O'BRIEN: I've seen lawyers
3 do that, no.

4 THE WITNESS: That's what I was
5 waiting for, is there another stack coming.

6 MR. O'BRIEN: No, there's not.

7 THE WITNESS: Or the after lunch
8 stack.

9 (Exhibit 61 identified.)

12:30 10 Q. I've handed you what's been
11 marked as Deposition Exhibit 61. Again, I
12 believe, but you can correct me if I'm wrong,
13 this is an internal HAN comment about why a
14 practice is switching from HAN to
15 ContextMedia, right?

16 A. Yes.

17 Q. And this is rheumatology, right?

18 A. That is correct, yes.

12:31 19 Q. And the practice felt that
20 ContextMedia's rheumatology offering was more
21 specific to their practice than HAN's
22 rheumatology offering, right?

23 A. It appears that -- it says that
24 the sound -- well, it does select their

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1 content. They did like the sound, but it was
2 not the deciding factor. They -- because one
3 of their monitors, they actually -- it looks
4 like they were going to leave the sound off
5 on.

6 Q. Well, the first part, doesn't it
7 say, "The site felt the programming on RHN
8 was more specific to their practice"?

9 A. That's what they said to us,
10 yes.

11 Q. And that they liked the
12 functionality of the ContextMedia program and
13 enjoyed the fact that it was customizable, do
14 you see that?

15 A. Yes, I do see that.

16 Q. Now, based on the answer you
17 just gave me, is it your position that HAN's
18 content was -- had equal or equivalent
19 functionality?

12:32 20 A. Well, I believe what it is, is
21 they were allowed to select their content,
22 pick and choose the educational segments that
23 they were playing, that's what they are
24 stating here. And at that time, they could

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1 not pick and choose content with us.

2 Q. Okay. So a moment ago when you
3 gave the answer that I understood to be that
4 they could do that?

5 A. Okay.

6 Q. What did I get wrong in that?

7 A. That they could -- when you said
8 they could put up their own messages, they
9 can actually create their own messages to put
10 on the program. What their ContextMedia, I
11 believe, is stating here is that they could
12 choose the purchase segments that
13 ContextMedia has, they could pick and choose
14 from those, versus with ours, which is
15 content that is created and developed by our
16 people internally, they could not pick and
17 choose which segments played for the
18 educational portion of it.

19 Q. Gotcha.

20 A. But both are customizable. They
21 can put -- both of them could put their --
22 their practices could put their own messages
23 up on both programs.

24 Q. Right, but the educational

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1 content --

2 A. Was a differentiator.

3 Q. Because on HAN you couldn't pick
4 and choose the educational content, but with
5 ContextMedia you believe you could?

6 A. That's what they state they
7 could. I don't know if that's actually
8 correct or not, but that's what they stated.

9 Q. Well, if it were correct, do you
10 think that's a fair differentiator?

11 A. Yes.

12 MR. O'BRIEN: All right. Why
13 don't we take our lunch break.

14 MR. JAHN: We're off the record.

15 (Lunch break taken.)

16 MR. JAHN: We're back on the
17 record.

18 (Exhibit 62 identified.)

19 Q. I'm going to hand to you, Ms.

20 Finley, and your counsel what's been marked
21 as Exhibit 62, is a January 12, 2012, e-mail
22 from you to Lori Smith reporting to you the
23 reasons why the other practice switched from
24 HAN to ContextMedia, right?

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1 A. Yes.

2 Q. And down toward the bottom it
3 was reported to Ms. Smith that the practice
4 did not think that ContextMedia misled her,
5 right?

6 A. Yes, that's what it states.

7 Q. Or pretended to be HAN at any
8 point, right?

9 A. Correct.

01:28 10 Q. Was that part of the script for
11 ContextMedia at some point, to ask the
12 practice if they felt ContextMedia had misled
13 you?

14 A. We were asking if they were --
15 yes, if they were receiving information, you
16 know, based on the permission to remove the
17 equipment that they -- if they were -- let me
18 say this clear.

19 Q. Sure.

01:28 20 A. Basically, when we found out
21 that there were locations that the practices
22 were telling us that ContextMedia stated
23 you -- we were authorized by Healthy Advice
24 to remove your equipment, they give us

Amy Finley, 3/20/2014

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1 permission or they do -- we do this all the
2 time and they're okay with this. When we
3 started hearing that was when we started
4 asking and probing the question with the
5 practices when we were learning that they
6 were leaving us for any reason to just
7 confirm whether or not that was being stated
8 to that particular practice.

9 Q. Okay.

01:29

10 A. So.

11 Q. Was it also part of the practice
12 to ask the practice whether or not
13 ContextMedia had pretended to be HAN at any
14 point?

15 A. Yes.

16 Q. And here it's reported back that
17 they didn't pretend to be HAN?

18 A. That's correct.

01:29

19 Q. Now, this -- pardon me if we
20 already covered this. This instruction to
21 ask these particular questions about
22 ContextMedia, I think you can't recall if
23 that was conveyed orally or in an e-mail?

24 A. Right. I feel like it was a

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1 discussion, especially, like I said with,
2 Lori being the pinpoint person, that her and
3 I had, just try to probe, understand if they
4 were being miss -- if they misrepresented us
5 in any way or were offered any type of
6 incentive.

7 Q. And Lori was expected to put
8 that in the database, right?

9 A. Right.

01:30

10 (Exhibit 63 identified.)

11 Q. Now, this is another practice
12 switching from HAN to ContextMedia and Ms.
13 Smith is reporting on -- reporting it up to
14 you, correct?

15 A. Correct.

16 Q. This is January 25, 2012?

17 A. Em-hm.

18 Q. And, "She reports to --" she
19 being the practice, "reports to Ms. Smith
20 that the person she was speaking to, Lori,
21 really liked the HAN program, but she does
22 not get to watch it very often. Lori, in the
23 practice, explained that the doctor went to a
24 rheumatology ACR symposium in Chicago and

01:30

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1 ContextMedia won him over there. She said he
2 came back and was excited to switch after his
3 first day back. He really liked the fact the
4 program has sound and is more of a video
5 format," do you see that?

6 A. Yes, I see that.

7 Q. This is another one of those
8 examples where ContextMedia was able to have
9 a practice switch based on some presentation
10 at a conference, right?

11 A. Right.

12 Q. And Lori reacts to that, makes a
13 recommendation, right?

14 A. Yes.

15 Q. She says that, "We need to be
16 actively seeking out these conventions and
17 attending each one. I got the feel that many
18 practices learned about RHN after the
19 convention we went to in Florida," do you see
20 that?

21 A. Yes, I see that.

22 Q. Going forward, did your company
23 try to be more involved and participatory --

24 A. Yes.

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1 Q. -- in conventions?

2 A. Yes, they did.

3 Q. Looking at this, do you see
4 anything here that suggests that ContextMedia
5 did anything wrong?

6 A. In this situation, no.

7 Q. And there's nothing wrong with
8 ContextMedia just selling itself at a
9 conference?

01:32 10 A. No, there's nothing wrong with
11 that.

12 (Exhibit 64 identified.)

13 Q. We'll mark this as 64. This is,
14 Ms. Finley, a couple months later reporting
15 to you that another practice is switching to
16 ContextMedia because of something they saw at
17 a convention, right?

18 A. Yes.

01:32 19 Q. By the way, have you ever talked
20 to anyone from ContextMedia?

21 A. Have I ever talked to anyone
22 from ContextMedia?

23 Q. Yeah.

24 A. One of their employees

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1 approached me at a conference, the ACR
2 conference in Washington, I guess, it was
3 about two years ago, maybe, but it was a
4 brief con -- he just introduced himself, he
5 was a sales rep, from what I understood. It
6 really wasn't much of a conversation about
7 our products, he just said, oh, I just
8 thought I'd come introduce myself, I'm sure
9 we'll be running into each other, so it
10 wasn't --

11 Q. I'm sorry, go on.

12 A. No, that's it.

13 Q. Did it ever occur to you that
14 what ought to happen here when you were
15 having these issues with them on this
16 equipment, the two parties just ought to get
17 together and try to work out an arrangement
18 for switching each other's equipment out when
19 that happened?

20 A. It didn't really occur to me. I
21 just was doing my part in trying to give this
22 information up to the executive team level. I
23 felt that was my job to make them aware.
24 What they did with it from there.

Amy Finley, 3/20/2014

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1 Q. That's their business?

2 A. That was up to them. I can only
3 make my recommendations and what I thought.

4 Q. Now, I'd like to show you
5 Exhibit 4, which was previously marked. I
6 thought I put it in the pile I set in front
7 of you at the very beginning this morning,
8 but I could be wrong.

9 A. This is all this morning.

01:34 10 Q. There wasn't an Exhibit 4?

11 A. No.

12 MR. BERNAY: Is this it here,
13 Dick? 4?

14 MR. O'BRIEN: Yeah. And here's
15 another copy for one of you.

16 MR. BERNAY: I'll take that.

17 THE WITNESS: What number is it?
18 Is it 4?

19 MR. BERNAY: 4.

01:34 20 Q. 4, this was marked at an earlier
21 deposition, that's why it's got a lower
22 number. And this is an e-mail you've seen
23 recently, right?

24 A. Yes.

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1 Q. Your lawyer showed this to you
2 in the meeting, right?

3 A. Yes.

4 Q. And this is a discussion with
5 some senior executives about how to come up
6 with a plan to combat ContextMedia in the
7 marketplace, right?

8 A. Correct.

01:35 9 Q. In the May 18, 2012, e-mail that
10 you write to Mr. Campbell, copying Greg
11 Robinson, Kimberly Theiss, Tom McGinness, you
12 write, "Tom, we are eager to come up with a
13 plan to combat ContextMedia since they are
14 impacting not only ACN but PCN churn as well.
15 We have a couple of ideas to get the ball
16 rolling," and you write, No. 1, "Since
17 content is the number one reason for the
18 switch, we are going to survey our ACN
19 advisory board members on our program
01:35 20 content," do you see that?

21 A. Yes, I see that.

22 Q. Did you, in fact, survey your
23 ACN advisory board members?

24 A. Yes, we did.

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1 Q. Who are your ACN advisory board
2 members?

3 A. We had in -- what year is this?
4 In 2011 we created an advisory board of
5 office managers from our current customers
6 to, basically, serve as a panel to provide
7 feedback to us.

8 Q. And did they give you feedback?

9 A. Yes, they did.

01:35 10 Q. What was it?

11 A. I can't recall everything that
12 was provided, but I -- off the top of my
13 head, nothing was alarming.

14 Q. Are you the person that
15 interacted with them?

16 A. With the board?

17 Q. Yeah.

18 A. It wasn't a, I guess, a formal.
19 It was more of a informal board panel, where
01:36 20 we would send an electronic survey to them.

21 Q. I see.

22 A. So.

23 Q. So you sent a survey to them
24 about ideas on how to --

Amy Finley, 3/20/2014

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1 A. Just asking for feedback on
2 their -- on the program itself.

3 Q. Okay. In comparison to
4 ContextMedia or --

5 A. Or just on the content in
6 general. What do you like, what don't you
7 like, do you want sound, do you not want
8 sound type things.

01:36

9 Q. So then each one of those board
10 members got a survey to fill out and turned
11 it back in?

12 A. Correct.

13 Q. Were you the point person for
14 getting those back?

15 A. No, I was not.

16 Q. Do you know who was?

17 A. I believe they came back to
18 Niki, I don't remember what her maiden name
19 is, but Niki from our research department.

01:36

20 I'd try to pronounce her last name, but.

21 Q. It's not easy like Finley or
22 O'Brien?

23 A. No, it's not.

24 Q. Did you ever see the survey

Amy Finley, 3/20/2014

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1 results?

2 A. Yes, I did.

3 Q. How many board members are there
4 approximately?

5 A. There was -- I believe we had
6 about 20 that were -- that we had as a panel
7 that were, again, there to provide feedback.

8 Q. Then you say action No. 2 is
9 "Next week we will begin to reach out to
10 customers who have canceled our program to
11 see why they canceled and possibly to see if
12 any will admit to accepting a monetary gift
13 for enrollment," do you see that?

14 A. Yes, I do see that.

15 Q. Was that done?

16 A. Yes, that was.

17 Q. Who did that?

18 A. I had one of the girls on my
19 team, Pam Pater, reach out to those
20 practices.

21 Q. So she reached out to each and
22 every one?

23 A. She tried to, attempted to, yes.

24 Q. And so what was -- what work

Amy Finley, 3/20/2014

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1 product did she generate as a result of that
2 effort?

3 A. What do you mean by that? Work
4 product?

5 Q. A report or an e-mail, a
6 survey --

7 A. Her information was put into,
8 when she made the phone call, her comments
9 were put into the database.

01:38 10 Q. That's separately recognized in
11 some way so that you could sort of see what
12 had been gathered in response to No. 2?

13 A. I believe the comment was also
14 transferred over to our spreadsheet.

15 Q. Okay. And is there a separate
16 column in the spreadsheet for that?

17 A. I believe so, but I've not seen
18 it in a while.

01:38 19 Q. My point is you thought it was
20 an important item to follow up on, right?

21 A. I wanted to try to -- yes, see
22 if that was the reason they were switching
23 and if they were -- how many offices were
24 really receiving some sort of an incentive to

Amy Finley, 3/20/2014

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1 entice them to switch.

2 Q. What I was leading up to was, I
3 mean, you've listed three things here, 1, 2
4 and 3, right?

5 A. Em-hm.

6 Q. And what I was just trying to
7 understand was if you, and you're in a
8 position of responsibility, thought it was
9 important to gather this information, I was
10 just trying to understand it. It came back
11 to you and then what did you do? You asked
12 for it, you obviously want the answers?

13 A. Well, yes, I wanted the answers.
14 Really, what I was looking for is, if that
15 was the case, and I don't believe that we
16 really found anybody, any alarming -- anybody
17 actually saying anything, which I can't
18 really expect it. I didn't expect anybody to
19 really come back and say, oh, you know, we're
20 not happy, we want to switch, because for a
21 practice to go through removing our
22 equipment, installing their equipment and
23 then removing it again to put ours back in,
24 it's a free program on both sides. At the

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1 end of the day, the practices don't have a
2 lot of time for this. So I wasn't really
3 expecting, you know, anything alarming, but I
4 just thought it was worth a try to see if,
5 you know, they were still happy or if they
6 were able to tell us, again, at this time is
7 where I still believed that receiving an
8 incentive was not correct.

9 Q. And then your third item in
01:39 10 order of importance was, "One of our field
11 sales reps is currently reaching out to a
12 rheumatologist they know to see if they can
13 help us gain more knowledge on RHN's
14 tactics," do you see that?

15 A. Yes, I see that.

16 Q. Was that done?

17 A. I believe she attempted to, but
18 she was not able to get any information.

19 Q. And then you conclude, "We'll
01:40 20 get you updated on the status of these
21 items," right?

22 A. Yes.

23 Q. And you're addressing this to
24 Mr. Campbell. And did you get back to them

Amy Finley, 3/20/2014

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1 all?

2 A. Honestly, I don't recall
3 actually following up on this with them.

4 Q. And then you're not on this but
5 Greg Robinson writes to McGinness, "Let's add
6 this to the list, I've been pushing TC and
7 Amy to put together a ContextMedia response
8 plan and it looks like she's making
9 progress." That's you, right?

01:40 10 A. Right.

11 Q. May 2012, given the job you had,
12 did you feel like you had a pretty good grasp
13 on why practices were switching from HAN to
14 ContextMedia?

15 A. If they were finding -- if --
16 yes, if we knew the reason or they told us,
17 yes.

18 Q. And you were kind of making it
19 your business to find out, right?

01:41 20 A. Yes, right, I was.

21 Q. It seemed like you put a lot of
22 effort and energy into it?

23 A. Yes.

24 (Exhibit 65 identified.)

Amy Finley, 3/20/2014

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1 Q. This is an e-mail exchange. The
2 last one is June 13, 2012, from Lori Smith to
3 Phyllis Timole and you and cc'd some others.
4 This involves another practice that decided
5 to switch from HAN to ContextMedia, right?

6 A. Em-hm, yes.

7 Q. And this one, one of the reasons
8 the practice switched was the doctor, again,
9 had seen ContextMedia at a convention, right?

01:42 10 A. Just a second, I'm reading
11 through it.

12 Q. It's down at the bottom.

13 A. Oh, is it on the first page?

14 Q. Yes, on the first page, the last
15 e-mail exchange.

16 A. "Cancel due to RHN," yeah.
17 "Doctor saw RHN at a convention."

18 Q. And it's indicated, "they've
19 been considering switching for about six
01:42 20 months," right?

21 A. That's what it states, yes.

22 Q. And going back up, working
23 backwards, the doctor had a few issues with
24 HAN's program, right?

Amy Finley, 3/20/2014

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1 A. Patient -- yes, the blue. This
2 is a blue screen, which, again, is another
3 one of those -- that's a channel station,
4 where if they changed the station, unless
5 we're notified it's hard for us to know that
6 there's something wrong.

7 Q. Have you done something since to
8 address that problem? By that I mean, is --
9 as far as the practice knows, the thing's not
10 working, but you don't know that?

11 A. Right.

12 Q. Have you done something on the
13 technology side to address that, so that the
14 channel can't change, for example, or?

15 A. Sometime we lock the screen, the
16 monitor down, but if we do that, then they
17 can't adjust the volume of the monitor.

18 Q. I see.

19 A. So we don't really like to do
20 that, but what we have done is try to reach
21 out more periodically with faxes, asking them
22 is everything working okay, kind of giving
23 them -- proactively reaching out to them to
24 say, give them an opportunity to say, oh,

Amy Finley, 3/20/2014

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1 yeah, it is -- it isn't working, where --
2 because we understand that a lot of times
3 they may see the blue screen or the black
4 screen, but they don't have time to stop and
5 call and we get that.

6 Q. And that is -- what you just
7 said has its problems too, because you'd
8 probably hear people say stop sending me
9 those darn faxes?

01:44 10 A. You could, yes, but.

11 Q. And this doctor was also not
12 happy with the fact that, I guess, you guys
13 were sending him a lot of Humira and Uloric
14 brochures?

15 A. Yes, it states that. That we
16 were, which is part of the program.

17 Q. Part of the program if you have
18 the racks in, right?

19 A. It's the brochure rack that goes
01:45 20 underneath the screen, yes.

21 Q. Does it go in automatically?

22 A. Yes.

23 Q. Can the doctor opt out of that?

24 A. Yes.

Amy Finley, 3/20/2014

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1 (Exhibit 66 identified.)

2 Q. This is another practice that's
3 indicating why it's switching from HAN to
4 Context, right?

5 A. Yes.

6 MR. BERNAY: Take your time to
7 review it.

8 A. Okay.

9 Q. Is this another switch from HAN
10 to Context?

11 A. I believe it -- yes, it is. I'm
12 just taken back because Elaine isn't usually
13 somebody that would work on a practice, so
14 I'm trying to recall if she actually pulled
15 this from the database and was just providing
16 me with this information or she actually
17 spoke to the practice. Based on this e-mail,
18 it's hard to tell.

19 Q. Notice the subject line, too.

20 A. Conference question, yes.
21 Because -- and that was the thing, a lot
22 of -- pretty much the whole trail of this
23 e-mail is about us attending a conference
24 that was in California. Because I do recall

Amy Finley, 3/20/2014

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1 Devin being a person that was somebody we
2 worked with for setting up a conference.

3 Q. Em-hm.

4 A. So I'm not sure how it jumped
5 from there to this conference question with
6 her comment about this one particular office.

7 So I feel like she was just pulling in
8 data -- oh, well, actually, now I see it.
9 ACN cancelled in December of 2011 and this
10 was 2012, so she was referring to an older
11 cancel.

12 Q. Why would she do that?

13 A. She must have been looking back
14 as to -- this was a cancelled site of
15 somebody that was going to be attending the
16 conference. To be honest, I'm not sure.

17 Q. Okay.

18 A. That's just based.

19 Q. Well, on the note that she
20 pulled from the database, it's indicated that
21 the practice is switching because of sound,
22 recipes and exercises, right?

23 A. Correct.

24 Q. But the practice actually tells

Amy Finley, 3/20/2014

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1 you what the biggest reason for the switch
2 was, doesn't it?

3 A. Yes, about the not being able --
4 or the practices not being -- "RHN so the
5 patients do not have to read everything on
6 the screen."

7 Q. Right. And then in the end down
8 there, there's a comment, "Added RHN as
9 competitor," do you see that?

01:49 10 A. Em-hm, yes.

11 Q. What is that?

12 A. So in the database, they could,
13 again, put as the cancelled reason code. At
14 one time we just would put cancelled
15 competitor. And then I don't recall at what
16 point in the life of our database we added
17 another field that said which competitor.

18 Q. I see.

01:49 19 A. So I'm going to take it that she
20 probably saw this one as a cancelled, she
21 went back and added what competitor it was in
22 our database.

23 Q. As of May 2012, and given what
24 your job responsibilities were and the people

Amy Finley, 3/20/2014

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1 you had working for you and reporting to you,
2 wouldn't you expect that you had a better
3 firsthand understanding of why practices
4 switched from HAN to ContextMedia than Mr.
5 McGinness?

6 A. Yes.

7 Q. Or Greg Robinson?

8 A. Yes.

9 Q. Or Tom Campbell?

01:50 10 A. Yes. Although, Tom should also
11 be well aware because I kept him informed
12 throughout the whole time.

13 Q. But he's not getting all the
14 information, you are?

15 A. No, he doesn't get it.

16 Q. You're in the trenches?

17 A. I'm more on the front line.

18 (Exhibit 67 identified.)

01:50 19 Q. This is No. 67. Really getting
20 close to the end.

21 A. I was wondering if that other
22 folder was another stack you pulled.

23 Q. No, I promise.

24 MR. BERNAY: Maybe.

Amy Finley, 3/20/2014

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1 A. Maybe.

2 Q. This appears to be, does it not,
3 another report of a practice deciding to
4 switch from HAN to ContextMedia, right?

5 A. Yes, it appears that they were
6 wanting to switch. It looks like we were
7 trying to save them.

8 Q. Yes, I agree. Although, whether
9 I agree or not doesn't matter, it's your
01:51 10 testimony that matters. But it's reported
11 that the practice has actually been turning
12 you off because patients have been
13 complaining that it's boring and repetitive;
14 is that right?

15 A. That's what we were told, yes.

16 Q. So it sounds like -- does that
17 mean, at this point, you have sound?

18 A. When is this?

19 Q. Well, it's --

01:51 20 A. It's 2013, we do have sound,
21 yes.

22 Q. It gets loud so she turns it
23 off.

24 A. We've always had some sound in

Amy Finley, 3/20/2014

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1 our practice.

2 Q. I see.

3 A. We've increased the sound over
4 the last year.

5 Q. Before that, was it -- what was
6 the sound, music?

7 A. More music that would show up
8 with the practice's custom message.

9 Q. I see. And now you've got
10 actually spoken words?

11 A. We do have some voiceover, yes.

12 Q. And when did that start?

13 A. I can't recall the exact date,
14 but I believe it was in 2013 at some point.

15 Q. Has that been helpful?

16 A. I wouldn't say that it's made a
17 huge impact, because, again, at the end of
18 the day, I still don't know if the sound -- I
19 think it could go both ways.

20 Q. No, I don't disagree, but I'm
21 just -- I mean, again, you're getting all
22 this information --

23 A. Right, --

24 Q. -- every day.

Amy Finley, 3/20/2014

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1 A. Yes, I think it -- I do think,
2 of course, any time you add or enhance your
3 program in any way it's helpful.

4 (Exhibit 68 identified.)

5 Q. This is a longer e-mail
6 exchange. But, by my reading of it, and
7 correct me if you disagree, again, involves
8 the situation of a practice deciding to
9 switch from HAN to ContextMedia?

01:53

10 A. Yes.

11 Q. And this is John Hopkins?

12 A. Yes.

13 Q. If you turn to the very first
14 e-mail in the chain, it looks like Ms.
15 Billmann is speaking to a Jonathan Rivera at
16 John Hopkins; is that right?

17 A. Yeah, that's what it appears
18 she's speaking to.

01:53

19 Q. And it looks like they've
20 already got ContextMedia in some of their
21 offices and now they're deciding, based upon
22 that experience, to add it to other offices.
23 Is that the way you read this?

24 A. Yes, so then -- yes.

Amy Finley, 3/20/2014

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1 Q. And he's telling you that they
2 got it in the other offices and they like it?

3 A. Yes.

4 Q. And based upon that, they want
5 to put it in the offices that don't have it?

6 A. Correct.

7 Q. And the reason he says they like
8 it is more information, not repetitive, and
9 they like the streaming weather, right?

01:54 10 A. Yes.

11 Q. And they're trying to save it,
12 HAN is, and the HAN person says, Ms.
13 Billmann, I explained that we have streaming
14 weather, too. I take it that was true as of
15 March 2013?

16 A. Correct, we did have weather.
17 We do have weather in our ACM program.

18 Q. "He described our system as
19 repetitive and a very basic slide show," do
01:55 20 you see that?

21 A. Yes, I see that. Again with the
22 slide show.

23 Q. Is it -- you have no problem
24 with, do you, with a practice having the

Amy Finley, 3/20/2014

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1 ContextMedia product in an office and liking
2 the experience and deciding, therefore, to
3 put it in another office, do you?

4 A. Right, no, I have no problem
5 with that, if that's what they choose, yes.
6 As long as we had a fair opportunity to and
7 it was being presented, you know, correctly,
8 I guess you could say. And I'm not saying in
9 this -- I'm not trying to lead in this

01:55 10 instance that I feel like they are saying
11 this was incorrect. I'm just kind of stating
12 that, with the slide show, this is something
13 we never heard. I mean, we've been doing
14 this for a long time and over the years with
15 churn and practices cancel, never were we
16 ever told slide show, used that terminology.
17 And so I just felt that that was something
18 that somebody was presenting that to these
19 practices that way, which then they were
01:56 20 using that back to us as, oh, it's a slide
21 show.

22 Q. But here, the practice has you
23 in some offices and ContextMedia in the
24 other, right?

Amy Finley, 3/20/2014

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1 A. That's what -- yes.

2 Q. And so he's in a pretty good
3 position to --

4 A. He is in a good position, yes.

5 Q. And haven't you seen internal
6 e-mails to HAN that refer to your product as
7 PowerPoint like?

8 A. Internal e-mails?

9 Q. Right, at HAN.

01:56 10 A. To us? Between each --

11 Q. You talking amongst yourselves
12 as referring to it as PowerPoint like?

13 A. We've -- no, we said that that's
14 what patients may have said or practices may
15 have said, again, through this whole
16 ContextMedia.

17 Q. Well, would you agree with me
18 that this John Hopkins situation at least is
19 an instance of fair competition?

01:57 20 A. Yes.

21 Q. And then it looks like Liz
22 Billmann, look at page 3 of the document, is
23 writing up to you and Chris Martini and
24 others.

Amy Finley, 3/20/2014

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1 A. Yes.

2 Q. And she's basically playing back
3 for you what this practice told her, right?

4 A. Correct.

5 Q. Can you, as you sit here today,
6 identify a single practice that switched from
7 HAN to Context because of something false or
8 misleading that ContextMedia said to the
9 practice?

01:58 10 A. That switched from HAN -- from
11 PatientPoint HAN to --

12 Q. Let me start that question over.
13 Can you identify a single practice as you sit
14 here that switched from HAN to ContextMedia
15 because of something false and misleading
16 ContextMedia said to the practice?

17 A. I don't know if I can identify
18 an actual practice off the top of my head, I
19 would have to look through data to do that.

01:58 20 Q. And what you would do is look
21 through the database, right?

22 A. Right.

23 Q. Because that's the best source
24 of information?

Amy Finley, 3/20/2014

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1 A. That is the best source of
2 information.

3 Q. Would you agree with me that,
4 given how long and consistently you've been
5 doing this, that you have a pretty good feel
6 for what factors practices feel are important
7 in choosing a point of care provider?

8 A. Yes and -- yes and no, I guess.

01:59

9 Q. Can you think of anybody in the
10 company that would have a better sense of
11 that?

12 A. I'm sorry?

13 Q. Can you think of anybody in the
14 company that would have a better sense of
15 that than Ms. Finley?

16 A. Salespeople.

17 Q. Okay, fair point. They might
18 have a better sense, but you've got a pretty
19 good sense?

01:59

20 A. I've got a pretty good sense.

21 Q. Who heads up the sales side?

22 A. Today -- as of today, it would
23 be Lee Hamwright.

24 Q. Back in this time period we've

Amy Finley, 3/20/2014

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1 been dwelling on, 2011, '12, '13?

2 A. Jill Brewer, and then from Jill
3 Brewer to Chris Martini.

4 Q. Okay. Well, at least based upon
5 your several years of experience, is it your
6 understanding the quality of the health
7 related programming is an important factor?

8 A. Yes.

02:00

9 Q. Is the quality of the
10 entertainment related program an important
11 factor?

12 A. Yes.

13 Q. How about the length of the
14 program, is that an important factor?

02:00

15 A. I wouldn't say it's a -- I
16 wouldn't say that's a focus, I mean,
17 obviously, we have some practices that do
18 state that they wanted a certain amount, but
19 considering that the program plays continuing
20 over, I don't think -- no, I don't think that
21 loop length is.

22 Q. How about the media format?

23 A. No, I don't think that.

24 Q. How about whether or not the

Amy Finley, 3/20/2014

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1 program has sound?

2 A. I think that varies.

3 Q. How about the quality of the
4 technical service?

5 A. I think that's important.

6 Q. How about the size and quality
7 of the hardware?

8 A. It varies.

9 Q. How about the practice's ability
10 to control the educational content?

11 A. I don't believe that's really
12 been a factor. We've heard that in -- not a
13 handful of practices that wanted that.

14 Q. How about the ratio of content
15 versus advertisement, is that an important
16 thing?

17 A. Yes, that's important.

18 Q. How about the practice's
19 experience with customer service?

20 A. That's important.

21 Q. How about the practice's
22 experience with sales representatives?

23 A. That's important.

24 Q. Would you -- all these factors

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1 that we ticked off to the extent you thought
2 they were important and some of them you said
3 you didn't think so.

4 A. Em-hm.

5 Q. Would you be able to rank them
6 or order them in order of importance from
7 your experience?

8 A. You know, it varies with
9 practices, but I would like to say that the
10 patient education is the number one.

11 Q. The content?

12 A. The content, which -- where
13 that's where I think it gets a little tricky
14 because, you know, our content, a lot of
15 these reasons for practices switching, you
16 know, you'll see that there's a lot, it's
17 just sound, news, weather, which isn't really
18 their content.

19 Q. Right.

20 A. And so that, you know, in saying
21 that, whether their content is better than
22 ours, I don't really feel like we're being
23 compared content to content. The news, the
24 weather, that's features, which we could add

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1 those features, that's not the same thing as
2 what our content, our patient educational
3 content is verus compared to their patient
4 education content.

5 Q. Well, and news and weather is a
6 patient educated content, isn't it?

7 A. No, it's not.

8 Q. Okay. So you think the
9 educational content would be the most
10 important factor. What do you think would be
11 the second most important factor?

12 A. The news.

13 Q. Pardon me?

14 A. The news and weather.

15 Q. Then after that?

16 A. It would be hard to rank.

17 Q. Okay. This isn't a quiz.

18 A. I'm just guessing. At this
19 point, I would be guessing and I don't want
20 to guess.

21 Q. Right. We're not going to go
22 beyond those, okay?

23 A. Okay.

24 Q. And these factors that are

Amy Finley, 3/20/2014

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1 important, people in the market that you're
2 in, competitors try to differentiate
3 themselves, right?

4 A. Em-hm, correct.

5 Q. You try to differentiate
6 yourself from the competition and you expect
7 others to do the same?

8 A. Yes.

9 Q. We touched on, a moment ago, the
02:03 10 fact that your folks were instructed to try
11 to find out if ContextMedia misrepresented
12 itself as HAN in any way, right?

13 A. Yes.

14 Q. Did you ever find any instance
15 where that, in fact, happened?

16 A. Well, that was the whole reason
17 why we started asking the question, because
18 we had a practice and maybe -- and I do
19 believe there was more than one, that

02:04 20 actually said, you know, they came to the
21 office, we thought they were you, they never
22 represented themselves as some completely
23 different company, they were here to service
24 and change the equipment. So when we started

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1 getting comments like that from practices,
2 that's when we were starting to get concerned
3 that we -- they were being misled and
4 misrepresenting us as Healthy Advice.

5 Q. I think I saw an e-mail along
6 those lines, and isn't it a fact you never
7 determined if that was ContextMedia?

8 A. I don't know.

9 Q. I mean, wouldn't it --

02:04

10 A. Considering that they switched
11 to ContextMedia, that's what would lead me to
12 believe it was ContextMedia.

13 Q. It just -- does that make any
14 sense to you for ContextMedia to portray
15 itself as HAN when its whole selling approach
16 was to try to say we're so different?

02:04

17 A. So, no, the approach was, I'm
18 here to upgrade your equipment, that's what
19 it was. I'm here to upgrade your equipment,
20 and so I'm just going to take that down and
21 put this up and, you know, send the other
22 equipment back. And not really stating that
23 this was PatientPoint or Healthy Advice's
24 equipment, I'm taking this down and sending

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1 this back, they would -- or they would call
2 and say, I'm calling to schedule an
3 appointment or coming to -- I want to upgrade
4 your equipment and they would use the upgrade
5 of the equipment as their tactic to -- versus
6 really truly selling it, it was, I'm coming
7 to upgrade your equipment, and that was where
8 it was misleading and we had practices call
9 back and call us and say, didn't I just talk
10 to you, you just talked to me about an
11 upgrade and we're confused.

12 Q. And is all of that that you just
13 said that, the answer you just gave me, that
14 should be reflected in that database?

15 A. It should be somewhere in that
16 database, yes.

17 Q. Have you looked recently?

18 A. No, not for that particular.

19 Q. And if it's not in there, maybe
20 it didn't happen, right?

21 MR. BERNAY: Objection. You can
22 answer.

23 A. I would like to say no, it did
24 happen. Whether -- it should have been

Amy Finley, 3/20/2014

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1 documented, but we wouldn't have made that
2 up. It wouldn't have come out of nowhere, it
3 happened somewhere along the line. I would
4 hope that it was documented in the database.

5 Q. But we've gone through a lot of
6 documents today, right?

7 A. Yes, we have.

8 Q. And doesn't it appear that
9 ContextMedia's modus operandi is to try to
10 convince practices that it's different and
11 better, and isn't that -- isn't that their
12 sales pitch?

13 MR. BERNAY: Object to the form.
14 You can answer.

15 Q. Whether that's right or wrong,
16 isn't that their pitch?

17 MR. BERNAY: Same objection.

18 A. It's every salesperson's pitch,
19 yes.

20 Q. That's why I said it doesn't
21 make any sense, but that's all right.

22 A. Right, but it was, again,
23 perceived as an upgrade. Let's make it easy.
24 Again, the practices are -- they don't want

Amy Finley, 3/20/2014

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1 to be inconvenienced, and so at the end of
2 the day, you're going to put a patient
3 education program in my waiting room and make
4 it easy for me, okay, great. And that's
5 pretty much what they were trying to do, is
6 make it as easy and painless as possible for
7 the practice by saying we'll take care of
8 everything for you, even by removing the
9 equipment.

02:06

10 Q. But wouldn't you agree that some
11 practices switched to ContextMedia because
12 they thought the quality of the content was
13 better?

14 A. Based on the comments we
15 received, yes.

16 Q. And whether or not the program
17 had sound, right?

18 A. Right.

02:07

19 Q. And the ability of the practice
20 to choose its educational content?

21 A. I wouldn't say that that was a
22 primary reason, but.

23 Q. It was a factor from time to
24 time?

Amy Finley, 3/20/2014

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1 A. But it was mentioned in one of
2 the cancels, yes.

3 MR. O'BRIEN: Let's take a break.

4 MR. BERNAY: Okay.

5 MR. O'BRIEN: I really may be
6 done.

7 MR. JAHN: We're off the record.

8 (Break taken.)

9 MR. JAHN: We're on the record.

02:13 10 MR. O'BRIEN: I have no further
11 questions. Thank you very much for your
12 time, Ms. Finley.

13 THE WITNESS: Really?

14 MR. BERNAY: I have.

15 THE WITNESS: Okay.

16 MR. O'BRIEN: Be careful.

17 DIRECT EXAMINATION

18 BY MR. BERNAY:

02:14 19 Q. I do know you want to get out of
20 here. I'm just going to ask you a few, a few
21 questions before you can go out the door.

22 A. Okay.

23 Q. But you'll be out of here very
24 shortly, okay. So you've been asked a lot of

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1 questions today and you've been shown a lot
2 of e-mails about practice correspondence; is
3 that right?

4 A. That's correct.

5 Q. And you generally have a good
6 handle on what practices that are switching
7 out from Healthy Advice or PatientPoint list
8 as the reasons why they're switching out?

9 A. Correct.

02:14 10 Q. Yeah. And do you believe that
11 when they -- when they tell PatientPoint,
12 they give you a reason or reasons, is that a
13 complete -- do you feel that's a complete
14 picture of why the practice is leaving?

15 A. I don't believe in every
16 instance that was the case, no.

17 Q. And if I told you that -- and
18 you know that a lot of practices switched to
19 ContextMedia over the last few years?

02:15 20 A. Correct.

21 Q. If I told you that ContextMedia
22 was telling Healthy Advice practices that
23 half of the Healthy Advice loop was
24 advertising, is that a true statement?

Amy Finley, 3/20/2014

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1 A. No, it's not.

2 Q. So it's false. If I told you
3 that Context --

4 MR. O'BRIEN: I'll object to
5 counsel testifying.

6 MR. BERNAY: Well, I was kind of
7 framing that as a question, but, okay. So
8 it's false?

9 A. Oh?

02:15 10 Q. That's false?

11 A. It is false, it is not
12 50 percent.

13 Q. And if I told you that
14 ContextMedia represented to practices that
15 they had switched out 350 Healthy Advice
16 monitors in the last year, when that figure
17 was actually a sixth of that, is that a --
18 would that be -- would that be a true
19 statement?

02:16 20 A. It was not a true statement for
21 them to say that there was over 350 switch
22 outs, no.

23 Q. Even to this point, have there
24 been --

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1 A. To this day, there still has not
2 been 350 switch outs.

3 Q. And do you think if your --
4 you're involved with practice communications
5 all the time. If you were a practice and you
6 heard a statement like that, would that be an
7 important statement?

8 MR. O'BRIEN: Object to the form
9 of the question. You can answer.

02:16 10 A. I do believe that would -- that
11 would have some influence on my decision,
12 yes.

13 Q. And if ContextMedia told a
14 practice they didn't have a contract with
15 Healthy Advice, is that a true statement?

16 MR. O'BRIEN: Same objection.

17 A. We heard that statement, that
18 they were telling practices that they did not
19 have a contract.

02:17 20 Q. Is that a false statement?

21 A. Okay. I need to repeat the
22 question, I'm lost.

23 Q. Sorry, I'll repeat it again. If
24 ContextMedia represented to a Healthy Advice

Amy Finley, 3/20/2014

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1 practice --

2 A. Okay.

3 Q. That they did not have a
4 contract with Healthy Advice?

5 A. Oh, okay.

6 Q. Is that true? Is that a true
7 statement?

8 A. No, they do have a contract with
9 Healthy Advice.

02:17 10 Q. And from your perspective, if
11 you heard that as a practice, would that
12 information be important to your decision to
13 switch?

14 MR. O'BRIEN: Object to the form
15 of the question.

16 A. Again, I think it could
17 influence their decision, yes.

18 Q. And if ContextMedia represented
19 to a practice that Healthy Advice's content
02:18 20 amounted to a PowerPoint slide -- first, is
21 that -- is it true that Healthy Advice's
22 content is a PowerPoint slide?

23 A. That is not true.

24 Q. And if you heard that as a

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1 practice, in your opinion, would that piece
2 of information be a factor in your decision?

3 MR. O'BRIEN: Object to the form.

4 Q. To switch to ContextMedia?

5 MR. O'BRIEN: Object to the form.

6 A. Again, I do believe it could
7 influence their decision.

8 Q. And if you as a practice were
9 told by someone at ContextMedia that they
10 were -- they were calling to upgrade your
11 equipment, again, based on your experience,
12 would you believe that they were calling from
13 Healthy Advice?

14 MR. O'BRIEN: Object to the form
15 of the question.

16 A. Yes, I would if they -- if I
17 didn't identify another company name.

18 Q. And if you were told by a
19 practice -- scratch that -- strike that.

20 If ContextMedia told a practice,
21 a Healthy Advice practice, that they were
22 authorized, they meaning ContextMedia, were
23 authorized to remove Healthy Advice's
24 equipment, would that be a true statement?

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1 A. That is not true.

2 Q. And if you were a practice and
3 you heard that statement, would that piece of
4 information be an important factor in your
5 decision to switch to ContextMedia?

6 MR. O'BRIEN: Objection to the
7 form.

8 A. Again, I think that it would
9 influence their decision, making it seem that
10 it was an easy process for them.

11 MR. BERNAY: Those are my
12 questions. I have nothing further.

13 RECROSS-EXAMINATION

14 BY MR. O'BRIEN:

15 Q. During the break, did you and
16 counsel go over the questions he was going to
17 ask you?

18 A. No, he did not. No, I did not.

19 Q. And a lot of those questions
20 were asking you to speculate about
21 hypothetical questions and how a practice
22 would react, right?

23 A. Like I said, I think it could
24 influence their decision. I wasn't stating

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1 that it did or it did not. Do I think it
2 could influence their decision? Yes, my
3 belief is that, yes, it could.

4 Q. All kind of things?

5 A. All things -- kind of things
6 could, yeah, right.

7 MR. O'BRIEN: I have nothing
8 further.

9 REDIRECT EXAMINATION

02:20 10 BY MR. BERNAY:

11 Q. Sitting here today, do you have
12 knowledge that all of the statements I made
13 in my questioning to you were actually made
14 to Healthy Advice practices?

15 A. Yes.

16 MR. BERNAY: I have no further
17 questions.

18 BY MR. O'BRIEN:

02:20 19 Q. Is that because you heard
20 ContextMedia make these statements to
21 practices?

22 A. I did not hear ContextMedia make
23 those statements. This was information that
24 was given to us from practices.

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1 Q. Right. And when that happened,
2 it would be put in the database, right?

3 A. It should be put in the
4 database.

5 MR. O'BRIEN: Nothing further.

6 MR. BERNAY: Nothing further.

7 MR. JAHN: We're off the record
8 at 2:19:29.

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AMY FINLEY

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(DEPOSITION CONCLUDED AT 2:19 p.m.)

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1 C E R T I F I C A T E

2

STATE OF OHIO

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: SS

COUNTY OF CLERMONT

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6 I, ANN M. BELMONT, RPR, the
undersigned, a duly qualified notary public
7 within and for the State of Ohio, do hereby
certify that AMY FINLEY was by me first duly
8 sworn to depose the truth and nothing but the
truth; foregoing is the deposition given at
9 said time and place by said witness;
deposition was taken pursuant to stipulations
10 hereinbefore set forth; deposition was taken
by me in stenotype and transcribed by me by
11 means of computer; deposition was provided to
witness for examination and signature outside
12 the presence of the Notary Public. I am
neither a relative of any of the parties or
13 any of their counsel; I am not, nor is the
court reporting firm with which I am
14 affiliated, under a contract as defined in
Civil Rule 28(D) and have no financial
15 interest in the result of this action.

16 IN WITNESS WHEREOF, I have hereunto set
my hand and official seal of office at
17 Cincinnati, Ohio this 23rd day of March,
18 2014.

19

20

21 My commission expires: ANN M. BELMONT, RPR
22 December 4, 2015 Notary Public - State of Ohio
23
24



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